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# In the Supreme Court of the United States

October Term, ———

No. 75-587

IN RE: A CONDEMNATION PROCEEDING IN REM BY REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA FOR THE PURPOSE OF REDEVELOPMENT OF FRANKLIN TOWN PROJECT PHILADELPHIA, INCLUDING CERTAIN LAND, IMPROVEMENTS, AND PROPERTIES

PHILIP B. BASSER ADVERTISING, INC., PHILIP B. BASSER, GERTRUDE GRENNETTE, THOMAS A. LAZAR, GENEVEVE LAZAR, ARMONDO DE FRANCESCO, JOSEPH SORGER, WILLIAM SATIS, BESSIE SATIS, HARRY WEXLAR, ARISTIDAS G. PAPPAS AND BARBARA PAPPAS,

*Petitioners*

vs.

REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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## PETITION

Philip B. Basser Advertising, Inc., Gertrude Grennette, Thomas A. Lazar, Geneveve Lazar, Armondo De Francesco, Joseph Sorger, William Satis, Bessie Satis, Harry Wexlar, Aristidas G. Pappas and Barbara Pappas, respectfully, request that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania.

## OPINIONS BELOW

The opinion of the Commonwealth Court of Pennsylvania is reported at 339 A.2d 885 and is printed infra as Appendix B. The Opinion of the trial court is not reported and is printed as Appendix A. The denial by the Supreme Court of Pennsylvania of the petition for allowance of appeal from the Commonwealth Court of Pennsylvania is printed as Appendix C.

## JURISDICTION

The order of the Supreme Court of Pennsylvania denying the petition for allowance of appeal was entered on July 25, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

## QUESTIONS PRESENTED

1. Do the Fifth and Fourteenth Amendments of the United States Constitution forbid the taking of private property by a redevelopment authority essentially for a private purpose, where the area is blighted and the taking will remove the blight?

2. Where owners in an area certified for redevelopment, but where the need is not pressing, combine and surreptitiously buy up more property in the area, with the intention of becoming developers and presenting a redevelopment proposal changing the City's plan, which change will force condemnation of a contiguous highly desirable area, since the contiguous land will then be necessary to make their project viable, and will greatly enhance the value of their own land; prevail upon the Planning Commission and the Redevelopment Authority to change the City plan to fit their proposals; propose and have themselves accepted as developers and obtain the condemnation, is such a taking essentially for private purposes and in violation of the provisions of the Fifth and Fourteenth Amendments of the Constitution of the United States?

## CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions which the above entitled petition involves are as follows:

Constitution of the United States, Amendment V:

> "No person shall be . . . nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Constitution of the United States, Amendment XIV:

> ". . . nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE FACTS

The Redevelopment Authority of the City of Philadelphia, after authorization by the city government, condemned the property of these petitioners for a redevelopment project. Petitioners filed objections to the taking asserting that it was essentially for private purposes and in violation of the Constitution of the United States:

> "The taking of said properties, under the circumstances of this case, is in violation of * * * the due process provision of the 5th Amendment and the due process of law and equal protection of the laws provisions of the 14th Amendment of the Constitution of the United States." (Paragraph 31 of the Preliminary Objections filed with the trial Court.)

The trial Court, Court of Common Pleas of Philadelphia County, Civil Trial Division, dismissed the objection. It held that the area was blighted, and that the taking was therefore for a public purpose. It refused to determine the role or weight of the private interests involved. On appeal, the Commonwealth Court of Pennsylvania, to whom the same question was posed (Appellant's brief, Statement of Questions Involved No. 1) made similar response and rejected the appeal. In the petition for allowance of appeal to the Supreme Court of Pennsylvania, the objection that the taking was for a private purpose was again raised and the brief prepared for the Commonwealth Court submitted. The petition was denied per curiam without comment.

*Statement of the Facts*

The relevant facts derived solely from the testimony of Mr. Nathan and Mr. Childs, the respondent's witnesses, are as follows:

On January 16, 1952, and at subsequent times, the Planning Commission of the City of Philadelphia, certified several central areas of the City as redevelopment areas. These areas included the project which is presently in issue, the Franklin Town Project, which comprises approximately 50 acres, bounded generally by 16th Street on the east, 21st Street on the west, Spring Garden Street on the north, and Race Street on the south. Although the Planning Commission had prepared a pilot plan in 1957, which was somewhat modified in 1963 and again in 1967, nothing had been done by the year 1969 to implement the plans for development of the central City areas. The comprehensive plan of the City in 1967 called for development of the area, which included Franklin Town, for light industry in the portion north of Vine Street, and of residential, institutional and some light commercial in the area south of Vine Street.

The genesis of the project had its beginning in the brilliant inspiration of a member of the brokerage firm of Butch[illegible]nd Sherrerd. The Philadelphia Electric Co., Smith, Kline and French, I. T. E. Imperial, Korman Corporation and City Stores (Lit Brothers), owned large parcels of land and buildings in the part of the area (here denominated Franklin Town) north of Callowhill Street. In some instances the land was vacant and used for parking, and in others the buildings were antiquated. The parcels had been cheaply acquired. The total investment at cost to these parties, was somewhat in excess of $3,000,000.

The concept was ingenious and simple, but required a great deal of skillful maneuvering. It reasoned that if the parties could put their parcels together, the values would be greatly enhanced by developing a high density residential area. However, it was felt it would be impossible to market such an enterprise unless there were an outlet from this area to the Penn Center area of the City, where there were amusements, hotels, theatres, restaurants and shops. Therefore, if the holdings of the companies could be expanded to include areas south of Callowhill Street and east of 18th Street, running to Race Street, such acquisitions would greatly enhance the value of the property already owned. In addition, the area between Race and Vine and 16th and 17th Streets, which has come to be known as the South Block in this litigation, and was the key area in the whole enterprise, was a valuable piece of center City property which could be made much more valuable if its use were hotel and commercial, rather than institutional and residential. A boulevard through the project, running from the residential area southeast to Penn Center, was envisioned.

The parties then devised the following plan:

They would form a joint venture, begin to acquire, on the quiet, whatever property they could in the area. After this was done, they would then work out some redevelopment plan and obtain the power of the public authorities to condemn property.

In 1969 the parties implemented their plan. They formed a joint venture, hired Mr. Jason Nathan, an extraordinarily astute strategist, an expert in redevelopment, and set him up in an office, which in a quiet manner be-

gan to acquire other parcels in the projected area. Mr. Nathan made unpublished contacts with the Mayor, the Planning Commission, the President of City Council and the Housing Authority.

In June of 1971, the combine had acquired 15 additional properties and owned 20 acres north of Callowhill Street. It needed 15 acres of City streets and 10 acres of land south of Callowhill Street. This included the land of the petitioner. Mr. Nathan's overtures had been kindly received and the Authorities were ready to cooperate. There was public announcement of the project and of a contract between the Redevelopment Authority (a so-called "assistance contract") and the joint venture. This contract recites that the Authority has selected the joint venture, called Franklin Town, as the developer of the area. Franklin Town hires the Authority to help it make plans and implement the scheme, and agrees to pay its costs for the acquisition of properties. The developer has the right to terminate the agreement if it becomes dissatisfied with the project at any time prior to the approval of a final redevelopment proposal.

This contract was neither submitted to City Council nor approved by it. Nevertheless, the Authority began to work for the developer. Mr. Nathan, in furtherance of the plan, prevailed upon the Authority and the Planning Commission, to change the City Plan so that the use of the north part of the area was changed from light industrial to residential, and the south block from institutional to residential and commercial. This was accomplished concurrently with the signing of the contract.

More acreage was then acquired. It does not appear exactly what pressures were brought to bear on the owners,

or what impression the publicity accorded the contact and the power of the Authority made on prospective sellers. It was no longer possible for the area to be a free market or one for private development.

After two years of bickering and treating with groups of the public and some revisions of the plans (City Stores had dropped out and with it, its parcel, a warehouse occupying about a city block almost exactly in the middle of the residential portion of the project and remission was granted to a church in the south block) the redevelopment plan and contract were presented to City Council and approved.

The ordinance approved the plan substantially as originally conceived and the prized south block, part of which the trial Court called an "oasis", was in the grasp of the combine, incorporated as Franklin Town, Inc.

The owners, especially those of the south block, among whom are these petitioners, dwellers in the "oasis", were understandably embittered. They considered the taking a gigantic, genteel rip-off, engineered by a dubious marriage of enterprise and piety, in which others, advantaged themselves at their expense. Accordingly, preliminary objections to the taking were filed, and this litigation resulted.

## REASONS FOR GRANTING THE WRIT

Redevelopment authorities have proliferated throughout our more heavily populated areas, whose ostensible purpose is to eliminate conditions of blight and restore delapidated areas.

Definitions of blight have been outrageously stretched. For example, criteria of blight, may be that the land is not used for its highest economic purpose (as in this case), that there is overcrowding, that the streets are too narrow, etc. It has become virtually impossible to challenge a determination of blight by governmental authorities.

The concomitant evil of these all-encompassing criteria is the opportunity which it gives to economically powerful developers to obtain land for schemes which will result in their great private profit, and deprive small entrepreneurs of the benefit of their foresight and risk in investing in real estate which would appreciate in normal economic development.

The developers in the instant case formulated a gigantic plan for redevelopment which greatly enhanced the value of large parcels of land already owned by them. In addition the mere assemblage of the real estate through condemnation by the Authority resulted in their great profit. They suggested the proposal, sought out the Authority, procured changes in the City plan to suit their schemes, made heavy investments, and pursued the project for many years.

Petitioners asserted that these factors and other attendant circumstances demonstrated conclusively that the

primary purpose of the taking was the private gain of the developers and not the elimination of blight.

The trial Court and the Appellate Courts refused to grapple with this issue. They held that since the area was determined to be blighted, a taking which would eliminate the blight was for a public purpose.

It is not difficult to foresee the consequences and the vast opportunities for expropriation for private profit which result from such a position.

There is a pressing necessity for the Supreme Court to establish the rules governing the circumstances under which property may be taken for redevelopment. If a determination of blight is to be the only criteria, small owners will become the prey of economic giants, who profess the public good while benefiting themselves.

The Court is asked to establish the proposition that the paramount purpose of a taking must be the public good; otherwise it is not for a public purpose and impermissible under the Constitution, even though blight may thereby be eliminated. The Courts should be instructed to investigate and rule upon the allegation that the taking was one whose paramount purpose was private profit and not the elimination of blight.

In the opinion of the writer, the facts herein, elicited from the respondent's witnesses, establish clearly that the paramount purpose of the taking was the private gain of Franklin Town Inc., the developer, and not the elimination of the alleged blight. The extraordinary investment in money and effort by the developer prior to appointment and its willingness to pay the immense expense of the condemnation and clearing, are not the results of charitable impulse, but the desire for profit.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,
DAVID FREEMAN,
*Attorney for Petitioner*

## APPENDIX A

## COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

No. 4488 April Term, 1973

A Condemnation Proceeding In Rem by Redevelopment Authority of the City of Philadelphia for the Purpose of Redevelopment of Franklin Town Project, Philadelphia, Including Certain Land, Improvements and Properties

## OPINION

Takiff, J., July 24, 1974:

After public hearing held on December 8, 1971 before the Committee on Rules of City Council of the City of Philadelphia, Bill No. 2666 was duly enacted approving the proposal of the Redevelopment Authority of the City of Philadelphia for the redevelopment of a portion of the Center City Redevelopment Area identified as Franklin Town Project. Pursuant to Resolution of the Redevelopment Authority adopted on April 2, 1973, a Declaration of Taking, as authorized under the Urban Redevelopment Law of May 24, 1945, P.L. 991, 35 P.S. Sec. 170 et seq.

was thereafter filed, duly recorded on April 26, 1973, and appropriate notice given. Preliminary Objections were timely filed on behalf of various condemnees under the Act of June 22, 1964, P.L. 84, Sec. 406, as amended, 26 P.S. Sec. 1-406, Answer containing New Matter and Reply were thereafter responsively filed.

Upon consideration of the pleadings and after extensive hearings held, the Preliminary Objections are Dismissed.

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## DISCUSSION

The Franklin Town Project site encompasses an area of approximately 50 acres bounded generally by 16th Street to 21st Street (East and West) and Spring Garden Street to Race/Vine Streets (North and South). This site was included generally in the detailed three volume study of the Central District of Philadelphia prepared for the Planning Commission of the City of Philadelphia by Alderson and Sessions (R-39, 39A and 39B*—N.T. 671-674), leading to its inclusion in the North Central Redevelopment Area (R-38—N.T. 707) which, on January 16, 1952 was certified by the Planning Commission to the Philadelphia Redevelopment Authority as a Redevelopment Area as defined by the Urban Redevelopment Law of 1945, based on findings of " (a) Excessive land coverage by buildings and lack of proper light, air and open space; (b) Unsafe, unsanitary, inadequate and overcrowded conditions of the

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* Exhibits have been marked at trial and are hereafter identified as follows: R—Redevelopment Authority; P—Preliminary Objectors, including the so-called Watch Dog Committee; K—Objector Krieg.

dwellings; (c) Faulty street and lot layout; and (d) Inadequate planning of the area and economically and socially undesirable land uses."

A Summary Report by the Comprehensive Planning Division of the Planning Commission, prepared in February 1956, re-evaluated the Central Urban Renewal Area, exclusive of the Central Business District (from Vine to South Streets), emphasizing many blocks of deteriorated housing, inadequate traffic patterns, incompatible land uses and suggesting various proposals for the revitalization of this area through effective planning (R-40). The same year the Planning Division of the Redevelopment Authority published its Summary Report on the Central Urban Renewal Area, which it categorized as containing "most of the City's renewal problems," and urged a "major policy emphasis on the Central City designed toward putting the City in the best possible position in competition with the suburbs for residents and business" (R-1 at page 123); Central City being there identified as including the area presently under consideration.

Massive studies by the Planning Commission, including the "Pilot Plan" prepared in February 1957 (R-42), "Commercial Land Use Distribution", prepared by Larry Smith & Company September 10, 1957 (R-45), "The Usefulness of Philadelphia's Industrial Plant", reported by Arthur D. Little, Inc. in January 1960 (R-46 and 46A) and "Traffic Improvement and Parking Studies" proposed for the Philadelphia Streets Department by Wilbur Smith and Associates (R-43, 44 and 44A) gave consummation in May 1960 to the Comprehensive Plan for the City of Philadelphia (R-47) prepared by the City Planning Commission. This document, promulgated as the blueprint for the fu-

ture physical growth and development of the City of Philadelphia, was prepared in accordance with Section 4-600 of the Philadelphia Home Rule Charter and, in accordance with the mandate of the Charter, was modified thereafter from time to time. One such modification, dealing, specifically with Center City, was effected on January 8, 1963 (R-48). The land use contemplated for the area now identified as Franklin Town was there denominated for institutional use along the Benjamin Franklin Parkway, and the Vine Street area contiguous to Logan Circle was regarded as an extension of the Penn Center Development or Market Street West (N.T. 91), with land to the north extending to Spring Garden Street and East to the Delaware River projected for industrial usage (R-48 at page 25), (N.T. 185-186). On the same day the City Planning Commission certified to the Redevelopment Authority of the City of Philadelphia the Center City Redevelopment Area, consolidating prior segmental certifications into a unified planning unit, and recertifying the characteristics defined in Section 3(n) of the Urban Redevelopment Law of May 24, 1945, as amended, qualifying it as a redevelopment area (N.T. 465 and 681). The redevelopment area plan was transmitted to the Redevelopment Authority on February 19, 1963 (R-50).

At that time it was recommended that the portions denominated "industrial" should be implemented for such uses as printing, manufacturing of clothing and light equipment and similar activities. Such redevelopment was in fact initiated in the easterly portions of the Center City Area between Front and 6th Streets and between Vine and Spring Garden Streets. That plan, with modifications not germane to Franklin Town (N.T. 473), was resubmitted

to the Redevelopment Authority on December 19, 1967, representing a recertification of the area as qualified for redevelopment in accordance with the Urban Redevelopment Law, for the reasons previously enunciated in earlier certifications (R-51, N.T. 628, 642-643). An interim study of portions of the area encompassed by Franklin Town had been made in 1965 by the Planning Commission when the Hahnemann Urban Renewal Area was under consideration (N.T. 647-649).

Thus, a determination of "blight", based on the criteria defined in the Urban Redevelopment Law, applicable to a larger area but including the site of the proposed Franklin Town, had been repeatedly certified prior to the conception of this specific project (N.T. 478).

Franklin Town was originally conceived as a joint venture consisting of Philadelphia Electric Company, Smith Kline & French (now Smith Kline Corp.), ITE Imperial, The Korman Corp., Butcher & Sherrerd and, in its earliest phase, City Stores (Lit Brothers). The Joint Venture was succeeded by Franklin Town Corporation in which the same participants were stockholders. Philadelphia Electric, as a public utility, received authorization from the Public Utility Commission on August 9, 1972 to be a participant and shareholder, as required under Sec. 202(f), Art. II of the Public Utility Law: R-33 (N.T. 404-405). Jason Nathan, who became the President of Franklin Town Corporation, had been the executive officer of the predecessor joint venture.

Nearly all of the participants in the project owned property within its boundaries. From the inception of the concept of Franklin Town, Mr. Nathan counseled the par-

ticipants that it should be a non-subsidized or non-assisted project, i.e., no governmental assistance as to land acquisition, interest, or otherwise so that the total cost of the project would be on the redeveloper, alone. Similar non-assisted redevelopment projects in the City of Philadelphia have included Park Towne Place, erected in the 50's and 1500 Market Street (N.T. 1067), which is currently approaching completion; the bulk of redevelopment projects are "assisted" (N.T. 1590).

Commencing in 1969 the participants, seeking to determine the feasibility of the project, consulted various persons and public bodies including the Mayor, the Redevelopment Authority and the Planning Commission. These inquiries were undertaken in order to determine the cooperativeness of all affected agencies and bodies, without whose involvement the project would be unworkable on a non-assisted basis.

The total site contemplated 50 acres of which the private participants owned approximately 20 acres; approximately 15 acres were in streets (N.T. 699, R-12) and 15 acres were originally to be acquired by negotiation and/or condemnation. A number of properties were acquired by Franklin Town prior to condemnation (R-21, N.T. 870). The existing use is primarily warehousing, heavy commercial, and parking. Small enclaves of mixed residential, office and retail use are proliferated through the area, in varying states of repair ranging from completely habitable to dilapidated (N.T. 65). The relative proportions of each class of use are: Industrial/commercial—18.9 acres; Parking—8.2 acres; Residential—2.8 acres; unused/vacant—3.5 acres; Railroad—1.3 acres; streets—14.5 acres—Total 49.2 acres. From early 1960 to the present time the only

increasing usage to which the area was put was the expanding use for parking (N.T. 75). Comparison of the 1960-1970 census reports indicates a decline in residential use in the area (N.T. 184-185). Between 1963 when it was last previously certified for redevelopment and 1971 when it was recertified, there was no substantial investment in new plant or facilities within the site boundaries (N.T. 738).

The total site encompasses 82 properties remaining to be acquired following condemnation—either by negotiation or adversary proceedings (N.T. 873). It does not conform with classic, evenly demarcated boundaries. The irregularity is, in part, affected by existing and ongoing programs including the Pennsylvania Highway Department plans for major ramp interchanges for Vine Street Expressway at 15th and 16th Streets,* the Hahnemann Redevelopment area, the recently constructed Bell Telephone and Pennwalt-Friends Select Buildings, the Cathedral of St. Peter and St. Paul, etc.

The irregularity of the condemned area has been defined and explained. The Planning Commission, the Redevelopment Authority and Franklin Town personnel participated in various discussions and mutual agreements resulting in inclusion and exclusion of various properties from the site (N.T. 703-704). These discussions occurred at early stages of the planning (N.T. 391). The "south block", i.e., 16th to 17th Streets, Race Street to Vine Street, which on the map adds to the non-symmetrical appearance

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* Several blocks fronting on Vine Street are contemplated to be the subject of later condemnation by Redevelopment Authority in conjunction with or ancillary to the Highway Acquisition.

of the plot plan, was regarded by the Planning Commission "as a very important link between the Penn Center area . . . and the blocks to the north . . . by using the block as a transition . . ." (N.T. 481). In the Center City Redevelopment Area Plan of 1967 (R-51) the "south block" was designated as mixed residential, commercial and institutional. This location is indubitably very convenient and desirable for the residents who have lived there (N.T. 1092), being accessible to Franklin Institute, Friends Select School, public buildings, within walking distance to downtown office buildings, etc. (N.T. 1094-95). The south side of Summer Street, 16th to 17th, whose residents were among the most active objectors, has properties whose original design is attributed to Thomas U. Walter, Architect. Several of these architecturally significant properties, however, have been demolished and/or altered (N.T. 1096-98).

The essential reason for the inclusion of the "south block" was to tie the entirety into the recent Penn Center development and the transportation facilities of the Suburban Station, to create commercial and hotel uses, to effect meaningful pedestrian patterns and to make the entire project a feasible and integral part of the Central City Redevelopment (N.T. 84 and 662).

Examination of the total plot plan suggests that it was "gerrymandered". However, this optical conception must be understood in the light of the existing structures previously referred to as well as the current plans for the contiguous areas. To the south and west are the Free Library, the Court House, Rodin Museum and the recently rebuilt Hancock Gross Industrial building. The south side of Spring Garden Street, 16th to 18 Streets, was in part the site of the former U. S. Mint, which has been acquired by

the Philadelphia Community College together with the adjoining block, reserved for future college development (N.T. 68). As to the area north and south of Callowhill Street between 16th and 17th one substantial portion is Reading Railroad property which is involved in protracted litigation (N.T. 367) and the other portion represents loft buildings which were recently or substantially improved and are the situs of substantial employment (N.T. 69-70 and 280).

Optimum planning might well have included the Lit Brothers Warehouse, located at 17th to 18th Streets, Reading Railroad to Hamilton Street (N.T. 687 and 711) and the Hancock Gross plant, contiguous to the westerly end of the site. The latter, however, was excluded because it is a recently constructed building, represents a substantial number of jobs and is not incompatible with the project. The Lits' property was excluded because of the inability of the sponsors of Franklin Town to reach agreement on a negotiated price for its acquisition and their unwillingness to risk the hazard of bearing the full (rather than "assisted") cost of the site if it were to be acquired under adversary condemnation proceedings (N.T. 1299).

The total site currently produces approximately $300,000 annually in real estate taxes; this has been described as the lowest taxable income per square foot in Center City. The development plan contemplates the generation of a new town with 4000 residential units, park, boulevard and a commercial sector (R-8). In addition, the project contemplates 3 to 4 million square feet for office space, miscellaneous commercial uses such as shops, stores, restaurants, hotels, etc. (N.T. 273). As of the time of the hearing on the Preliminary Objections all of the property

exclusive of street beds was either previously owned or had been acquired by Franklin Town, with the exception of approximately 5 acres (N.T. 79 and 266). This is graphically illustrated on Exhibit R-9A.

The Franklin Town Project, under study and consideration from late 1969, was publicly announced on June 3, 1971 (P-17, N.T. 1179). The formalization of the project moved swiftly thereafter. On June 4, 1971 by Resolution #7522, Franklin Town, then a joint venture composed of the participants previously identified, was conditionally selected by the Redevelopment Authority as the redeveloper (R-55) (N.T. 1015), subject, inter alia, to a submission of its qualifications and the deposit of the sum of $25,000 with the Authority as "working capital". A survey of environmental and building conditions in the Franklin Town and adjacent area to be performed by Metropolitan Engineers, Inc., was authorized jointly by the Planning Commission and the Redevelopment Authority in April or May 1971 (N.T. 737, 1643), preliminarily reported on June 16, 1971 (N.T. 513) and formally transmitted on July 19, 1971 (R-52, N.T. 1646). Metropolitan Engineers, Inc. is a concern engaged in urban renewal and planning studies. The survey was performed by two registered engineers, a registered architect, planner and structural survey team (N.T. 1641-1646).

The Metropolitan Engineers study was predicated upon the criteria of blighting influences as specified in the Pennsylvania Urban Redevelopment Law (Section 1702a). The report is summarized in eight categories of environmental deficiencies, i.e., (1) traffic and circulation deficiencies, (2) incompatible land use relationships, (3) overcrowding of buildings on the land, (4) excessive dwelling

unit density, (5) obsolete buildings not suitable for improvement or conversion, (6) hazards to health and safety, (7) economically undesirable use of the land, and (8) miscellaneous environmental deficiencies. Table 1, at page 5 of the report, being a summary of the incidence or frequency of environmental deficiencies as to each of the 23 blocks in the studied area, shows a proliferation of these deficiencies throughout the entire area. Four scattered blocks, i.e., Nos. 3, 8, 13 and 18 (none of which are included in the Franklin Town area) showed no deficiencies while all the others, in one or more categories, were reported as containing deficiencies (see Map 3, R-52). This study contains numerous photos illustrative of the conditions therein described. The findings reported by Metropolitan Engineers were consistent with the findings made at the time of the last prior recertification in 1967, i.e., one or more elements of blight existed in all of the area, in varying degrees in various parts, sufficient to warrant the finding of blight in the entirety (N.T. 655).

This survey, supervised by the Executive Directors of the Planning Commission and the Redevelopment Authority, reconfirmed that the 1963 Certification made pursuant to the Urban Redevelopment Law of 1945, under which the elements of blight, as defined in the statute, were then found (N.T. 468, 644 et seq.) persisted as of the time of the 1971 survey (N.T. 491, 640).

Based upon all of the studies, including the current Metropolitan Engineers study, the Planning Commission enacted and on July 20, 1971 transmitted to The Redevelopment Authority an amendment to the Center City Redevelopment Plan, modifying the proposed land use, consistent with the projected Franklin Town (R-53). At the

meeting of the Planning Commission held on September 7, 1971, attended by a number of the protestants including several witnesses who testified in the present proceeding the Franklin Town Redevelopment Proposal (N.T. 528, 727 and R-54a) was approved; subject to certain modifications not presently germane (R-54).

In arriving at the determination of approval, the Planning Commission considered multiple environmental factors and deficiencies. The evaluation included consideration of the "south block" and specifically Summer Street between 16th and 17th, where certain of the properties were dilapidated (N.T. 541) and other environmental deficiencies including uneconomic land use were found (N.T. 543). Among other deficiencies the Franklin Town area presently contains narrow streets, with particular congestion on the north-south streets, industrial buildings with poor loading facilities and antiquated construction representing fire hazards (N.T. 469), unsafe and dangerous conditions in various alleys and street intersections (551), unsanitary conditions in lots and yards, buildings subject to code violations (N.T. 553), overcrowding of housing based on census figures (N.T. 554), inadequate planning and multiple incompatible land uses.

The Redevelopment Authority of the City of Philadelphia, created pursuant to the Urban Redevelopment Law, supra, formally considered the Franklin Town proposal at a regularly scheduled meeting on June 4, 1971 (P-11) and by Resolution 7522 conditionally approved Franklin Town, a joint venture, as redeveloper for the Project. On June 16, 1971, an undertaking referred to as an "Assistance Agreement" was entered into between Franklin Town, a joint venture, and the Redevelopment Authority, providing for

the rendition of professional and technical service by Redevelopment personnel required for the preparation of a redevelopment proposal preparation of ordinances, acquisition of properties, management of acquired properties and other services, all of the direct and indirect costs thereof to be paid for by the redeveloper, Franklin Town. Payment for such services was to be made as billed, secured by a $25,000 deposit fund (working capital), to be replenished as reduced.

Following public meetings at which objections to the proposed project were received and considered, at its session on September 3, 1971 the Authority enacted Resolution #7635 reaffirming its selection of the developer, approving the developer's financial ability to acquire the area, approving the Redevelopment Proposal and authorizing preparation of the Ordinance to implement the execution of the project (R-56, N.T. 1033).

Although somewhat out of context to the present chronological recital, it is significant to note that the Assistance Agreement contains the following two successive provisions:

> "b. *Direct Costs*
>
> Payment for all direct costs shall be made to the Authority by the Redeveloper upon receipt from the Authority of a requisition for actual costs incurred by the Authority.
>
> Prior to execution of the Redevelopment Contract for the project, the Redeveloper agrees to furnish the Authority with a letter from an insurance company or bank acceptable to the Authority, verify-

ing that the Redeveloper has a letter of credit or other acceptable form, in an amount agreed upon by the Redeveloper and the Authority as sufficient *to cover all elements of damage in the Pennsylvania Eminent Domain Code to be incurred by the Authority in the execution of this project,* and the insurance company or bank will, upon request, pay to the Redeveloper for transmittal to the Authority the funds requisitioned by the Authority from time to time for payment of costs incurred hereunder." (Emphasis added.)

"6. *Condemnation Bond*

To secure the obligation of the Redeveloper to pay costs incurred under this Agreement pursuant to the Pennsylvania Eminent Domain Code, the Redeveloper agrees to deposit with the Authority, prior to the Authority's execution of the Redevelopment Contract, a bond or bonds with corporate surety, in form reasonably satisfactory to the Authority, suitable for filing with the Court with a Declaration of Taking in an amount agreed upon by the Redeveloper and the Authority. The amount of the bond to be sufficient to cover and based upon the following elements of damage in the Pennsylvania Eminent Domain Code: twice the estimated acquisition costs of property to be acquired by the Authority including the estimated amount of machinery and equipment damages for such properties, plus the total estimated costs for commercial and residential relocation payments and damages for loss of patronage relating to such properties." (Pages 4 and 5 of R-11.)

These provisions will be discussed hereafter in our consideration of the matter of security and bond required and/or provided by the redeveloper. At this juncture, however, it is appropriate to observe the seeming duplication and overlapping of these provisions on the single subject of security for payment of damages under the Eminent Domain Code. As of the time of the hearings held in this proceeding, however, Franklin Town had paid the sum of $2,298,750 to Redevelopment Authority (N.T. 1608) in reimbursement for real estate acquisitions on a negotiated basis (N.T. 1605) plus approximately $200,000 in reimbursement of salaries, fringe benefits and overhead for services rendered by Redevelopment personnel (N.T. 1607) and a like amount in reimbursement of costs of appraisal, demolition and other services (N.T. 1610), all as required pursuant to the terms of the Assistance Agreement.

The Redevelopment Proposal, with recommendations (R-13), was submitted by the Planning Commission to the President and Members of the Council of the City of Philadelphia on September 7, 1971, with the certification that the proposed Redevelopment Agreement between the Redevelopment Authority and "Franklin Town, A Joint Venture, To Be Reorganized As A Pennsylvania Corporation" was in accordance with the Center City Redevelopment Area Plan, as adopted on December 19, 1967, as amended.

Public hearing was held before the Committee on Rules on December 18, 1971 at which time a number of the witnesses in support of the Preliminary Objections appeared. At that hearing Franklin Town was envisioned as the implementation of the plan conceived a half century ago when the Benjamin Franklin Parkway and the public buildings bordering it were designed and executed in an-

ticipation that they would provide the impetus to the reconstruction of Center City's northwestern quadrant. In the intervening years, however, that area north of the Parkway had deteriorated, with the scattered enclaves of homes "struggling to maintain a foothold in a hodge podge of factories, warehouses and vacant lots." (Pages 6 and 7 of R-14).

Council Bill No. 2666 was approved by the Mayor on December 31, 1971 and authorization thereby given to the Redevelopment Authority "to proceed with minor changes in substantial conformity with the said Redevelopment proposal." In Section 5 the Ordinance provided "Redevelopment Authority is authorized to execute the hereby approved Redevelopment contract with Franklintown . . . The Redevelopment Authority and the redeveloper are authorized to take such action *in substantial conformity* to the Redevelopment Contract as may be necessary to carry it out." (Emphasis added.)

Although a non-assisted project and hence not subject thereto, the Franklin Town relocation standards and guarantees, as provided under Section 5 of the Ordinance, equal or exceed the standards of the Federal Uniform Relocation Act of 1971 (N.T. 778, 1130 and R-15, Sec. 5). In addition, real estate tax assistance has been provided as the obligation of the redeveloper for qualified, relocated single family home owner occupants for a term of ten years (Section 10 of the Ordinance).

The original Joint Venture was succeeded by Franklin Town Corporation, a Pennsylvania Corporation, in which the original joint venturers became the stockholders. The participants contributed the land severally owned by

them to the Joint Venture and thereafter received stock when the transfer of entity was effected on August 18, 1972. In addition to the land originally owned by the several participants, prior to the Declaration of Taking they negotiated and acquired a number of additional properties within the area (R-21). On the Notes to the Audited Consolidated Financial Statements of Franklin Town for the period August 18, 1972 to December 31, 1972 (R-29) the transition and participant's initial involvement is stated as follows:

> "1. Franklin Town Corporation (the Corporation) is the successor to a joint venture formed in November 1969 to undertake development of an area of approximately 50 acres in Philadelphia, Pa. The joint venture participants contributed an aggregate amount of $920,000 to the project, and additional funds were obtained through joint venture borrowings.
>
> "On August 18, 1972, all of the assets of the joint venture were transferred to Franklin Town Corporation in exchange for the assumption of the joint venture's liabilities and the issuance of 26,804 shares of the Corporation's stock to the joint venture participants. The assets acquired and the liabilities assumed were recorded on the books of the Corporation at their net book value. In addition, the joint venture's wholly-owned subsidiary was liquidated into the Corporation.
>
> "On the same date, the Corporation issued 55,738 shares of its stock and $3,775,000 principal amount of its subordinated debentures to certain of its shareholders in exchange for additional real estate in

the development area. This real estate was recorded at $5,906,000, being the aggregate fair market value reduced for future anticipated tax effects resulting from the fact that the transferors' cost bases for these properties aggregated $3,731,478.

"In connection with the aforementioned transactions, capital in excess of par value was credited in the amount of $2,033,009.

"Certain of the properties acquired from shareholders were leased to the transferors under lease agreements which provide that, in lieu of rent, the lessees will pay all occupancy costs and real estate taxes related to the properties. The leases terminate in segments as needed by the Corporation for development, except for certain leases which terminate on fixed dates in August of 1974 and 1977."

A Redevelopment Contract was executed between Franklin Town Corporation and Redevelopment Authority of the City of Philadelphia on December 15, 1972 (R-27). This agreement provided for the acquisitions by Redevelopment Authority of approximately 10 acres of property and the stage transfers thereof to Franklin Town within 84 months. The redeveloper undertook to commence construction within 12 months and to effect completion of the project within 120 months thereafter. Subsequent to December 15, 1972 and prior to the hearing in this proceeding, additional properties were acquired through negotiation so that as of this time the total acreage remaining to be acquired through condemnation is approximately 8 acres. Franklin Town assumed the burden of payment of an amount equal to all real estate taxes on the real estate to be acquired by

Redevelopment Authority so long as the latter holds title and also the burden of tax increases as may be incurred by qualified single family homeowners in the project area who are relocated into replacement homes for a period of ten years or exhaustion of an escrow fund of $25,000.

To secure the obligation of the redeveloper to pay the costs incurred under the Pennsylvania Eminent Domain Code, paragraph 8 of the Redevelopment Agreement repeated, essentially in ipsis verbis, the provision of paragraph "6. Condemnation Bond" of the Assistance Agreement (R-11) quoted, supra. It is noteworthy that the provision of the immediately preceding paragraph of the Assistance Agreement, above quoted, captioned "b. Direct Costs" and dealing with a letter of credit from a bank acceptable to the Authority ". . . to cover all elements of damage in the Pennsylvania Eminent Domain Code to be incurred by the Authority . . ." is *not* restated in the Redevelopment Agreement; an omission which will be discussed further hereafter.

Under the same date, namely December 15, 1972, Franklin Town Corporation executed and delivered to Redevelopment Authority, its Bond in the principal sum of $20,000,000.

> "for the use and benefit of the proper parties in interest, for such amount of damage, not exceeding Twenty Million Dollars ($20,000,000.00), in the aggregate, as the parties in interest shall be entitled to receive pursuant to the Pennsylvania Eminent Domain Code . . . by reason of the condemnation of certain land and buildings by the Obligee (Redevelopment Authority) pursuant to a Redevelopment Contract . . . dated as of December 15, 1972." (R-22)

The aforesaid Bond was secured, inter alia, by Mortgage being even date, secured upon all of the lands and buildings then owned by Franklin Town Corporation or thereafter to be acquired within the parameters of the project as therein described,

> "under and subject, nevertheless to a certain mortgage to Girard Trust Bank (hereinafter "Girard"), in the amount of $17,100,000 dated as of December 15, 1972 . . ." (R-23)

Under the same date, Girard Bank issued to Redevelopment Authority its written assurance, captioned "Funds Available to Franklin Town for Land Acquisition and other Expenses under the Redevelopment Contract", as follows:

> "This Bank has issued its commitment dated August 17, 1972, to Franklin Town Corporation in the total amount of $17.1 million for the purpose, among other things, of assisting Franklin Town to acquire certain real estate in Center City Redevelopment Area (Franklin Town Project) pursuant to the terms and provisions of a certain redevelopment contract bearing even date herewith between Franklin Town and the Redevelopment Authority.
>
> "This letter will constitute formal assurance to you by the Girard Trust Bank that a total sum of $12.1 million has been allocated under this financing or otherwise committed by our bank to cover the acquisition costs of the properties subject to the redevelopment contract, including the estimated amount of machinery and equipment damages for such properties, plus the total estimated cost for commercial and residential relocation payments and damages for loss

of patronage relating to such properties, being the costs under the Pennsylvania Eminent Domain Code which Franklin Town is required to pay under the Redevelopment Contract. *In the event of any default by Franklin Town the Redevelopment Authority will have the right to draw directly on these funds, as needed for the intended purposes. In any event these funds shall not be drawn by any other person or be allocated for any other purposes without the prior approval of the Redevelopment Authority.*" (R-24, 24A) (Emphasis added.)

Concurrently, Franklin Town by letter to Redevelopment Authority, confirmed that it would not draw upon the said $12,100,000 fund except for the restricted purposes of acquisition costs of properties, etc. and that all requisitions for disbursements would be subject to prior approval by Redevelopment Authority (R-61). Also delivered to Redevelopment Authority was an opinion letter from counsel for Franklin Town expressing the opinion that the Authority was justified in accepting the Franklin Town bond in the amount of Twenty Million, the assurance letter from Girard Trust Bank and the mortgage from Franklin Town Corporation, subordinate in lien to the mortgage to Girard Bank, as compliance with paragraph 8 of the Redevelopment Contract. (R-60)

The operative facts giving rise to the assurance delivered by Girard Bank to Redevelopment Authority is disclosed in the following documents, all bearing date the 15th day of December, 1972:

(1) A Loan Agreement between Franklin Town Corporation (borrower) and Girard Trust Bank in

which the Bank agrees to lend Borrower the aggregate amount of $17,100,000, evidenced by two notes, one in the principal sum of $5,100,000 (the Bank's Note) and the other in the principal sum of $12,000,000 (the Participating Bank's Note), the said loan to be disbursed for the project costs in accordance with the Letter of Assurance issued to Redevelopment Authority, copy of which is annexed to the Loan Agreement. (K-4)

(2) A note from Franklin Town Corporation (Maker) to Girard Trust Bank (Payee) in the principal sum of $12,000,000. (K-1)

(3) A note from Franklin Town Corporation (Maker) to Girard Trust Bank (Payee) in the principal sum of $5,100,000. (K-2).

(4) A mortgage from Franklin Town Corporation (Mortgagor) to Girard Trust Bank (Mortgagee), encumbering, as a first lien, premises then owned and thereafter to be acquired within the project site, to secure, inter alia, the note obligations in the total amount of $17,100,000 and the obligations of Girard under the Letter of Assurance executed in favor of Redevelopment Authority "to make payment of certain funds directly to the Authority." (K-3)

(5) To effectuate the priority of the mortgage liens created in favor of Girard and Redevelopment Authority on December 15, 1972, as previously described, two subordination agreements (R-30 and R-31) were executed on December 13, 1972 by I. Townsend Price, mortgagee of certain of the properties then owned by Franklin Town Corporation within the proj-

ect area, postponing the lien of the said Price Mortgage to the lien of the Girard mortgage and the Redevelopment mortgage, respectively.

(6) A commitment fee was paid by Franklin Town Corporation to Girard Bank for the loan and assurance commitment. (N.T. 387, K-4)

As of August 1972, based upon appraisals then made by Jackson-Cross Company, the assembled land value of Franklin Town, predicated upon the feasibility projections of the Franklin Town plan, expectations of future market demand and other factors, was $29,000,000 (R-25-26). The aggregate of the highest appraisals obtained by Redevelopment Authority for the properties scheduled for condemnation (R-66), some of which have since been acquired by negotiation, was $6,030,800 (N.T. 1700-01). The gross cost of acquisition as submitted to City Council, exclusive of street improvements which is not an item of damage under Eminent Domain, was $11,000,000. The sponsor's statement of qualifications and financial responsibility (R-28) disclosed equity in land contributions of $1,907,906.

The acceptability of the foregoing obligations and assurances, in satisfaction of the Condemnation Bond requirements "with corporate surety, in form reasonably satisfactory to the Authority" (Paragraph 8 of the Redevelopment Contract, R-11) originated with a submission of this proposal to Redevelopment Authority on August 11, 1972 (R-34). At that time, noting that the proposed condemnation would be in two stages because of the ongoing State Highway Program with regard to the Vine Street Expressway and the resultant omission of three blocks on the north

and south sides of Vine Street, the security then tendered was submitted by Franklin Town as being in excess of the Redevelopment Authority's typical 200%-100% security ratio and grossly in excess of that standard when measured against the projected costs on this condemnation (R-34a). This proposal was formally approved by Resolution #8141 adopted by the Redevelopment Authority, subject to conditions thereafter complied with, on August 23, 1972 (R-58) and notification of such acceptance was communicated to Franklin Town by letter dated August 30, 1972 (R-35), restricted, however, as to the subject taking, only, i.e., "with respect to the second portion of the area to be condemned, additional security in a form and manner satisfactory to the Authority shall be submitted before the Authority proceeds." (Paragraph 7 of R-58)

Following closing and delivery of the various documents above identified, the execution of the Redevelopment Contract dated December 15, 1972 was confirmed and ratified by the Redevelopment Authority by Resolution #8295 adopted on January 8, 1973 (R-63). Thereafter, on April 2, 1973 the Redevelopment Authority declared the selection and appropriation of the Franklin Town site for redevelopment in accordance with the Urban Development Law, supra, and authorized the filing of Declaration of Taking and other proceedings appropriate to implement that action: Resolution #8366, April 2, 1973 (R-64). The Declaration of Taking together with the Bond of the Redevelopment Authority was thereafter filed and recorded on April 26, 1973 (R-70) and Notice to Condemnees duly given. (N.T. 785, 171-172)

Testimony in support of the Preliminary Objections was offered by a number of owners and tenants, many of

whom had appeared at the public meetings of the Planning Commission and the Redevelopment Authority as well as at the public hearing of the Rules Committee of City Council. Submitted into evidence were a number of photographs in support of the contention that the area was not blighted; an assertion that in essence ignores the multiple and alternative statutorily defined basis for such a conclusion. A review of all of the evidence and testimony offered by the objectors, including the various letters, memoranda and testimony introduced before City Council—all of which has been identified as Exhibits and offered into evidence in this proceeding—leads inexorably to the conclusion that the objections are based on (a) the wholly understandable resistance to being involuntarily removed from established and convenient homes, apartments or rooms (some of the residents have been there for 40 years—N.T. 1584), (b) concern over adequate and acceptable relocation housing, (c) dissatisfaction with the failure to reach an acceptable negotiated acquisition price, and (d) the onslaught of transients, vagrants and scavengers who have been magnetized to the area by the news of the proposed condemnation and the demolition activity in connection with properties owned by the developer.

On the substantive issue of the elements of "blight", except for the protestation over the threatened destruction of the design of an historically significant architect, to whom the houses on the south side of Summer Street are attributed, (N.T. 1539-42, 1560 et seq.), much of the testimony of the objectors was supportive and corroborative of the Planning Commission findings on such matters as faulty street layout (N.T. 1076), unsanitary conditions—which the objectors attributed primarily to the pre-condem-

nation demolition by Franklin Town (N.T. 1079), the unsafe air conditions resulting from the presence of grain dust in a one-time elevator (N.T. 1078) and like general observations. No qualified expert was offered on behalf of the objectors on any phase of the challenged determination of blight, as concluded by the Planning Commission and the Redevelopment Authority. Despite efforts expended by the sponsors over the course of as many as 100 meetings with residents and/or residents' representatives, the fundamental complaint is the recognizable and, in the context of current efforts to resolve the multiple problems of urban regeneration, the unavoidable unhappiness and resentment which a threatened change of status quo engenders. All change is traumatic in its sequelae; the very act of movement, no matter how commendable its direction and goal, is likely to be abrasive and therefore irritating. In as sympathetic and favorable a view as we can take of the essence of the testimony offered against Franklin Town, this is the sum of it all.

Multiple averments were made in the several Preliminary Objections which have been filed. Some of these may be disposed of summarily, being totally without any substance. There is not a scintilla of evidence to support the allegation that the Redevelopment Authority has been subverted, "taken over" and/or dominated by the private redeveloper. The uncontradicted testimony negates the bald averments that the officers of Franklin Town had no authority to execute documents on its behalf, that the Chairman of the Redevelopment Authority had no power to execute documents on its behalf or that Philadelphia Electric Company, one of the participants in Franklin Town Corporation, had no authorization to participate in the venture.

Other objections are wholly misdirected, ignoring the fact that the project is "non-assisted" and hence not subject to certain Federal Statutes, except as to certain post condemnation standards which have been contractually assumed by the redeveloper. The fundamental objections are premised upon the averments that (1) the area condemned is not blighted; (2) the condemnation is arbitrary, capricious and in bad faith and the taking is not for a public purpose; (3) the Bond of the Redevelopment Authority is insufficient and inadequate because not in a specified amount and not supported by corporate surety; and (4) Redevelopment Authority and Franklin Town have failed and neglected to negotiate with owners and residents in good faith and failed to provide adequate relocation housing. This last contention can be concluded swiftly. Even if true, and the record does not support such a conclusion, such a requirement does not exist under the law: Pittsburgh School District Condemnation Case, 430 Pa. 566 (1968), and see Upper Dublin Township Authority v. Piszek, 420 Pa. 536 (1966).

Many of the detailed averments of the Preliminary Objections, few of which have been the subject of any competent evidence or testimony offered by the Objectors, are far beyond the scope of proper Preliminary Objection and are more aptly directed against the philosophical implications of the awesome power of eminent domain, rather than the appropriateness of the exercise of that power under the circumstances which are here extant.

The procedures and scope of Preliminary Objections have recently been the subject of restatement by the Supreme Court in Simco Stores, et al. v. Redevelopment Authority, No. 424, January Term, 1973. Opinion filed March

25, 1974, Pa. (1974). The embarkation point for such inquiry is found in Section 406 (a) of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. Sect. 1-406 which provides:

> "(a) Within thirty days after being served with notice of condemnation, the condemnee may file preliminary objections to the declaration of taking. The court upon cause shown may extend the time for filing preliminary objections. Preliminary objections shall be limited to and shall be the exclusive method of challenging (1) the power or right of the condemnor to appropriate the condemned property unless the same has been previously adjudicated; (2) the sufficiency of the security; (3) any other procedure followed by the condemnor; or (4) the declaration of taking. Failure to raise these matters by preliminary objections shall constitute a waiver thereof."

This has been held to establish the exclusive procedure to challenge the exercise of the power or right presently asserted by the Redevelopment Authority: Simco, supra; Commonwealth Appeal, 429 Pa. 254 (1964). The lawful existence of the power of condemnation vested in the Redevelopment Authority under the Urban Redevelopment Law, after an attack which included many of the allegations of the instant objections, was constitutionally sanctioned in Belovsky v. Redevelopment Authority of Philadelphia, et al., 357 Pa. 326 (1947) where the Court said at 338:

> "Dornan v. Philadelphia Housing Authority, 331 Pa. 209, 200 A. 834, may be regarded as the prototype of the present case since all the arguments now

presented on this subject were there fully considered. The Urban Redevelopment Law closely parallels the provisions of the "Housing Authorities Law" of May 28, 1937, P.L. 955, with which the Dornan case was concerned. The fundamental purpose of both these acts was the same, namely, the clearance of slum areas, although the Housing Authorities Law aimed more particularly at the elimination of undesirable dwelling houses whereas the Urban Redevelopment Law is not so restricted. But the Housing Authorities Law had an important additional objective in that, as ancillary to the slum clearances, there were to be provided 'decent, safe, and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income'; these were to be constructed and acquired by the Housing Authorities and leased out by them to the class of tenants for whose use such accommodations were designed. In the case of the Urban Redevelopment Law the operation of clearing and rehabilitating the 'slums', now called 'blighted areas', is not to be followed by a continuing ownership of properties by the Redevelopment Authorities for any such further and ulterior social-welfare purpose as that of providing low rental homes for persons in moderate circumstances. In this additional feature of the Housing Authorities Law there was implicit the modern recognition of an enlarged social function of government which called for an advance over previous legal conceptions of what constitutes a public use justifying the exercise of the power of eminent domain, but this court sustained the constitutionality of that act, and the courts of numerous

other States have, without exception, upheld similar legislation. In the case of the Urban Redevelopment Law, therefore, the justification of the grant of the power of eminent domain is even clearer than in the case of the Housing Authorities Law, there being in the present act only the one major purpose of the elimination and rehabilitation of the blighted sections of our municipalities, and that purpose certainly falls within any conception of 'public use' for *nothing can be more beneficial to the community as a whole than the clearance and reconstruction of those sub-standard areas which are characterized by the evils described in the Urban Redevelopment Law*. It has long been clear that those evils cannot be eradicated merely by such measures, however admirable in themselves, as tenement-house laws, zoning laws and building codes and regulations; these deal only with future construction, not with presently existing conditions. Nor, as experience has shown, is private enterprise adequate for the purpose. The legislature has therefore concluded—and the wisdom of its conclusion is for it alone—that public aid must accompany private initiative if the desired results are to be obtained. The great cities of Europe have been improved and largely rebuilt through the expenditure of public moneys by the edicts of monarchs and dictators; if the governing bodies in our own democratic Commonwealth are to be held unable, under our constitution, to plan and support such reconstruction projects, our cities must continue to be marred by areas which are focal centers of disease, constitute pernicious environments for the young, and, while contributing little to the tax income

of the municipality, consume an excessive proportion of its revenues because of the extra services required for police, fire and other forms of protection.

"One of the objections urged against the constitutionality of the Urban Redevelopment Act is the feature of the 'redevelopment project' which contemplates the sale by the Authority of the property involved in the redevelopment, it being claimed that thereby the final result of the operation is to take property from one or more individuals and give it to another or others. Nothing, of course, is better settled than that property cannot be taken by government without the owner's consent for the mere purpose of devoting it to the private use of another, even though there be involved in the transaction an incidental benefit to the public. *But plaintiff misconceives the nature and extent of the public purpose which is the object of this legislation.* That purpose, as before pointed out, *is not one requiring a continuing ownership of the property as it is in the case of the Housing Authorities Law* in order to carry out the full purpose of that act, *but is directed solely to the clearance, reconstruction and rehabilitation of the blighted area, and after that is accomplished the public purpose is completely realized. When, therefore, the need for public ownership has terminated, it is proper that the land be re-transferred to private ownership, subject only to such restrictions and controls as are necessary to effectuate the purposes of the act.* It is not the object of the statute to transfer property from one individual to another; *such transfers, so far as they may actually occur, are purely incidental to the*

*accomplishment of the real or fundamental purpose. . . . Nor does the taking lose its public character merely because there may exist in the operation some feature of private gain, for if the public good is enhanced it is immaterial that a private interest also may be benefited.*" (Emphasis added.)

The existence of the power having been constitutionally sanctioned, analysis leads us next to the inquiry as to the circumstances under which it may be appropriately exercised; that it is not an absolute one needs no exposition, for the Eminent Domain Code, supra, enunciates the procedure for challenge. The ambit of appropriate attack has been variously described. Thus, in McSorley v. Fitzgerald, 359 Pa. 264 (1948) it was observed, at page 268:

"*It is true, of course, that the question whether the use to which a governmental agency intends to devote property taken under the alleged right of eminent domain is a public one, is a judicial question for the determination of the court*: Philadelphia, Morton & Swarthmore Street Rwy. Co.'s Petition, 203 Pa. 354, 362, 53 A. 191, 193; Pennsylvania Mutual Life Insurance Co. v. Philadelphia, 242 Pa. 47, 52, 53, 88 A. 904, 906; Dornan v. Philadelphia Housing Authority, 331 Pa. 209, 222, 200 A. 834, 841. *But a legislative declaration with respect to that question, while not conclusive, is entitled to a prima facie acceptance of its correctness*: Dornan v. Philadelphia Housing Authority, supra; Belovsky v. Redevelopment Authority of Philadelphia, 357 Pa. 329, 334, 54 A.2d 277, 280." (Emphasis added.)

A threshold procedure to the ultimate legislative authorization by City Council to the Redevelopment Authori-

ty for its acquisition of property by condemnation, is the determination by the City Planning Commission that the property is "blighted" as defined by the statute: Oliver v. City of Clairton, 374 Pa. 333 (1953). Ancillary, if not indeed almost axiomatic, to a determination of blight is the finding that the condemnation of such blighted property is for a public purpose. The present Objectors have challenged both conclusions. Here, as in Schenck v. Pittsburgh, et al., 364 Pa. 31 (1950), at page 35 it may be said:

> "Plaintiff asserts that the mere fact that the City Planning Commission has certified the tract as a blighted area does not conclusively establish that the redevelopment of this particular land is in fact for a public purpose. The answer to this contention is that, in the absence of any indication that the Commission did not act in good faith or was wholly arbitrary in certifying the area designated by it as blighted, its certification to that effect is not subject to judicial review. Among the conditions enumerated in the Urban Redevelopment Law as constituting a 'blighted' area are 'inadequate planning of the area', 'excessive land coverage by the buildings thereon', 'defective design and arrangement of the buildings thereon', 'faulty street or lot layout', and 'economically or socially undesirable land uses.' Such conditions were found by the City Planning Commission to exist; it pointed out that the area certified by it had been laid out on a street pattern which dated from the year 1784 and which was wholly unsuited to the needs of a modern city because of poorly located street space and failure to provide for the ever increasing traffic; that the area

was marred by too great a building density; and that the commercial and industrial uses of the buildings thereon were in large part economically undesirable, as shown by a continuous reduction in the appraised values of the properties for tax purposes. The existence of these conditions brings the situation clearly within the scope of the Urban Redevelopment Law, and, since that act gives the power of eminent domain to the Urban Redevelopment Authority, it is for that agency, and not for the courts, to determine whether or not the power should be exercised in this particular instance. It has been held in many cases that where the right of eminent domain is vested in a municipality, an administrative body, or even a private corporation, the question as to whether the circumstances justify the exercise of the power in a given instance is not a judicial one, at least in the absence of fraud or palpable bad faith."

Further amplification of the role of judicial review of the determination of blight preceding condemnation was expressed in Crawford v. Redevelopment Authority, 418 Pa. 549 (1965) where, at page 554, it was noted:

> "The power of discretion over what areas are to be considered blighted is solely within the power of the Authority. The only function of the courts in this matter is to see that the Authority has acted not in bad faith; to see that the Authority has not acted arbitrarily; to see that the Authority has followed the statutory procedures in making its determination; and finally, to see that the actions of the Authority do not violate any of our constitutional safeguards."

The factual situation in Crawford, supra, appropriately merits further comment in view of the strong pleas of the Objectors in the present proceeding for the retention of their residences, particularly on the south side of Summer Street; an oasis in a desert of dilapidation and deterioration, except for rare and sporadic residential outcroppings proliferated at several other spots in the entire area. In that case the subject of condemnation was essentially bifurcated by an alley, with approximately 32.6% of the entirety located south of the alley. The objection to the condemnation was raised by the owner of a substantial portion of that high quality southerly property. The court noted, at page 555:

> "These experts conceded [for the objector] that the area north of the unnamed alley was blighted, but that the Crawford property, which constituted a large part of the property south of the unnamed alley, was not blighted. The plaintiff then produced pictures showing the garden of the Crawford property, which is an island amidst obviously blighted, run-down and deteriorated property. However, the entire city of Uniontown was the subject of a comprehensive study by a professional planning organization. Their conclusions were submitted to the Urban Redevelopment Board, the City Planning Commission, and the City Council, which determined that the whole area had taken on the character of blight. The legislature has decreed that blighted areas be restored to healthy and prosperous urban areas. If urban areas had been kept in the same condition as the Crawford property, there would be no need for an Urban Redevelopment Law. We cannot construe the actions of the Urban Renewal

Board as arbitrary merely because one small part of the entire blighted area is free from blight. Comprehensive planning requires that areas be considered in their entirety and not in their unseverable parts. In St. Peter's v. Urban Red. Auth. of Pgh., 394 Pa. 194, 146 A.2d 724 (1958), p. 197, we said: '. . . the purpose of the authority is to deal with an area rather than with individual properties: Oliver v. Clairton, 374 Pa. 333 (1953).' "

Is the declaration of the right to challenge the discretionary exercise of power by the Authority in this area, where private property and public interests are seemingly locked in adversary confrontation, a pure illusion? This substantive conflict was highlighted in the Concurring Opinion in Faranda Appeal, 420 Pa. 205 (1966) where private property and sovereign powers were viewed as in opposition to each other and where a plea was uttered for the protection of individual rights. In Faranda, supra, the Supreme Court restated the limited scope of the exclusive method of challenging condemnation, noting that there is no requirement under the Urban Redevelopment Law that a redeveloper must be chosen or that a contract be entered into with a redeveloper for the re-use of the land as prerequisites before the Authority can condemn property, "so long as the purpose of the condemnation satisfies the constitutional and statutory requirements." (at 299). How and under what limitations, therefore, is compliance with these mandated requirements to be measured? Quoting Blumenschein v. Pittsburgh Housing Authority, 379 Pa. 566, 572, 573 (1954) the Faranda court stated:

". . . 'By a host of authorities in our own and other jurisdictions (citing cases) it has been estab-

lished as an elementary principle of law that courts will not review the actions of governmental bodies or administrative tribunals involving acts of discretion, in the absence of bad faith, fraud, capricious action or abuse of power; they will not inquire into the wisdom of such actions *or into the details of the manner adopted to carry them into execution . . .*' (Emphasis supplied). In the absence of a showing of any fraud, abuse of discretion or bad faith, Faranda's objection must be dismissed."

In Faranda, supra, as here, the Objectors raised challenge to the power and right of the Authority to condemn the property by asserting that it was not in fact blighted. The logical syllogism to which this inquiry is relevant is: (a) the power to condemn property is legally restricted to a taking for public use; (b) a taking for the elimination of blight is a public use, (c) therefore, if there is no blight the taking is without power or right. Such an attack, the Court in Faranda reasoned, does not seek to examine the "wisdom" of the Authority's exercise of power, but the basic power itself. Such a challenge is appropriately and exclusively raised by Preliminary Objections. And, the Court there held, the dismissal of an objection posing this issue, was error warranting remand to take testimony by deposition or otherwise on this fact issue.

In a later case, Price v. Philadelphia Parking Authority, 422 Pa. 317 (1966), further exposition of the rationale of the appropriateness of judicial review of the action of a public authority, albeit one far more restricted in purpose and function than the Redevelopment Authority, was expressed as follows (at page 329):

"As public bodies, they exercise public powers and must act strictly within their legislative mandates. Moreover, they stand in a fiduciary relationship to the public which they are created to serve and their conduct must be guided by good faith and sound judgment. See Schwartz v. Urban Redevelopment Auth., 411 Pa. 530, 536, 192 A.2d 371, 374 (1963); Heilig Bros. Co. Inc. v. Kohler, 366 Pa. 72, 77-78, 76 A.2d 613, 616 (1950). The mushrooming of authorities at all levels of government and the frequent complaint that such bodies act in an arbitrary and capricious manner in violation of existing law dictate that a check rein be kept upon them. Schwartz v. Urban Redevelopment Auth., 411 Pa. 530, 536, 192 A.2d 371, 374 (1963); Keystone Raceway Corp. v. State Harness Racing Comm., 405 Pa. 1, 5, 173 A.2d 97, 99 (1961). These considerations dictate that the independence of authorities from some of the usual restrictions on governmental activity not be extended so as to insulate them from judicial scrutiny . . .". (Footnotes omitted; and see Washington Park, Inc. Appeal, 425 Pa. 343 (1967).)

It was against the background of the law as it had been enunciated prior to Simco, supra, that this Court allowed considerable latitude in the presentation of testimony at the protracted hearings on the Preliminary Objections.

As the record reflects, the Redevelopment Authority assumed the onus of the presentation of multiple exhibits and witnesses in an exposition of the historical background, factual findings, as well as testimony concerning the detailed procedures followed, which ultimately were consum-

mated in the challenged Declaration of Taking. The Objectors thereafter introduced a number of exhibits and the testimony of witnesses, some of which has been alluded to previously. The Trial Court now has the benefit of evaluating all that has transpired at the hearings against the recent expression by the Supreme Court in Simco, supra; a condemnation which had its genesis in the 1963 City Planning Commission Certification of the area from Spring Garden Street to South Street and from the Delaware River to the Schuylkill River as "blighted": Defining the scope of judicial review, the Court stated in Simco:

> "On review a condemnee should be given an opportunity to prove that a certification of blight is arbitrary and capricious. Faranda affords a condemnee that opportunity. It does not require the lower court to substitute its discretion for that of the legislatively-granted discretion of the Commission. . . . It is presumed that the Commission performed its duties in good faith . . . and the appellant's burden of proving fraud or abuse is a heavy one. . .". (Citations omitted.)

At the hearing in the instant proceeding, the Redevelopment Authority assumed the burden of going forward with the evidence, in its exposition of how it proceeded and what it did in arriving at the conclusion to exercise the power of condemnation. Under Simco, the burden of proof of establishing that such action was arbitrary or capricious was and at all times remained upon the Objectors. That burden has not been discharged despite full opportunity so to do. By the testimony and evidence offered by Redevelopment Authority, it fully satisfied the threshold inquiry into its "power or right" to condemn; the burden

of proof to the contrary rested upon Objectors. The issue of the existence of blight was properly posed by the Preliminary Objections and was the subject of a full evidentiary hearing as mandated by Faranda, supra, as well as by Simco, supra.

An appropriate and detailed examination of the adequacy and sufficiency of the Bond of the Redevelopment Authority and surety in connection therewith was a subject of Preliminary Objection and testimony before the Court.

The Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. §1-403, as amended, contains the following provision:

> "(a) Bond. Except as hereinafter provided, every condemnor shall give security to effect the condemnation by filing with the declaration of taking its bond, without surety, to the Commonwealth of Pennsylvania for the use of the owner or owners of the property interests condemned, the condition of which shall be that the condemnor shall pay such damages as shall be determined by law."

In the 1964 Comment by the Joint State Government Commission, the following was stated:

> "This subsection changes existing law. Generally, under existing law when a condemnor is required to give security, the condemnor must tender a bond to the owner and if the bond is not accepted by the owner, the condemnor must file it in court and have it approved. See, e.g., The First Class Township Code, 1931, June 24, P. L. 1206, Art. XIX, §1903, as

reenacted and amended (53 P.S. §56903), and as to corporations, the Act of 1874, April 29, P. L. 73, §41, as amended [15 P.S. §3022]. It is intended by this subsection to eliminate the necessity of tendering a bond to the condemnee and obtaining court approval thereof; the condemnor merely files an open end bond with the declaration of taking. If the condemnee desires to challenge the bond, he may file preliminary objections thereto after being served with notice. See Sections 405 and 406. It is intended by this subsection that the bond filed shall be an open end bond."

The Bond filed by the Redevelopment Authority was an "open end bond". What then of the sufficiency of the security to the condemnees from an Authority which has no taxing authority and where the condemnation is on an unassisted basis, i.e., without the benefit of subsidy, contribution or other financial assistance from either City, State or Federal sources? The Eminent Domain Code, anticipates the problem of assuring the payment of damages to which the condemnees shall be entitled in the following provision:

> "(c) Insufficient Security. The Court, upon preliminary objections of the condemnee under and within the time set forth in section 406(a), may require the condemnor to give such bond and security as the court deems proper, if it shall appear to the court that the bond or power of taxation of the condemnor is not sufficient security."

In Section 406(a) dealing with the right of the condemnee to file preliminary objections, one of the subjects

explicitly subject to objection is described in subsection (2) "The sufficiency of the security."

It is therefore clear that there is appropriately before the Court the issue of the sufficiency of the security of the Redevelopment Authority for payment of just compensation due the condemnees. It is also patently clear that the security of a "corporate surety" bond, although this specialized form of security is no place mandated by either the Urban Redevelopment Law or the Eminent Domain Code, has been interjected into the various contractual and other undertakings.

As earlier noted, the Assistance Agreement (R-11) entered into on June 16, 1971 between Franklin Town, then a Joint Venture, and Redevelopment Authority in successive and somewhat duplicative paragraphs provided for security to cover all elements of damage payable under the Eminent Domain Code; first, in the form of a Letter of Credit from a bank or insurance company and second, in the form of a "bond with corporate surety, in form reasonably satisfactory to the Authority." This seeming substantive duplication was not repeated in the ultimate Redevelopment Agreement entered into between Franklin Town Corporation and Redevelopment Authority on December 15, 1972 (R-27). In this document, the second provision of the earlier Assistance Agreement, dealing with a bond with corporate surety, was restated in ipsis verbis while the reference to a Letter of Credit was omitted. It was this form of the Redevelopment Contract which was submitted to and approved by City Council and the parties were then authorized to proceed "in substantial conformity to the Redevelopment Contract as may be necessary to carry it out."

To support the Bond of the Redevelopment Authority there has been filed by Franklin Town its Bond, secured by mortgage duly recorded and further supported by the letter of assurance given by Girard Bank to Redevelopment Authority. This security arrangement was the subject of negotiation between Franklin Town and Redevelopment Authority in the interim between the time the Assistance Agreement was executed and the Redevelopment Contract was finalized and it was formally accepted by the Redevelopment Authority as compliance with the Redevelopment Contract on January 8, 1973. Negotiations between Franklin Town and Redevelopment Authority were carried on and mutually approved prior to the submission of the proposed Ordinance and Redevelopment Contract to City Council. From this chronological sequence we can reconcile the seeming disparity between the mutually acceptable security arrangement and the language contained in the final Redevelopment Contract by concluding that the requirement of the Redevelopment Contract was deemed to be "in form reasonably satisfactory to the Authority" by the "Bond" of Franklin Town Corporation and the "corporate surety" requirement of that Agreement was met by the Letter of Assurance provided to Redevelopment Authority by the Girard Bank.

Inter se, the satisfaction of the contractual undertaking is a matter only for the parties. As between the objector-condemnees and Redevelopment Authority, the only function of the Court is to determine the substantive issue of "the sufficiency of the security", as required under the Eminent Domain Code; not the form thereof. In a real sense the Letter of Assurance by the Girard Bank to Redevelopment Authority is a more accessible form of "securi-

ty" than the collateral undertaking of a conventional corporate surety. In the latter instance, the obligation of the surety is conditioned upon the default of the primary obligor, in which event recourse may be had to the surety. In the arrangement here consummated among the parties, funds more than adequate to discharge the primary obligation under the Eminent Domain Code are immediately available for the restricted use of Franklin Town only for purposes approved by Redevelopment Authority and may be drawn directly by the Authority should Franklin Town commit any default. On the basis of all of the evidence adduced, including a review of all of the exhibits, which have been introduced on the subject of the estimated damages to condemnees, the value of the mortgage security and the unequivocal commitment by Girard Bank to Redevelopment Authority for the sole use and purpose of payment of condemnation damages, we have concluded that the requirements of the Redevelopment Contract and of the City Ordinance have been substantially complied with. Preliminary Objection based on this issue is without merit.

We have therefore reached the following:

## FINDINGS OF FACT

1. The properties which are the subject of this condemnation proceeding generally lie within the general boundaries of Race-Vine Street to Spring Garden Street, 16th Street to 21st Street, presently known and identified as Franklin Town. (R-68)

2. The area presently known as Franklin Town was first certified as a Redevelopment Area by the Philadelphia City Planning Commission as a part of the North Central

Redevelopment Area on January 16, 1952. (N.T. 446-47)

3. Among the data available to the Philadelphia City Planning Commission when that certification took place were a series of studies of the Center City Area made by Alderson and Sessions (R-39, R-39(a), R-39(b)) and other materials. (N.T. 447-49)

4. The Franklin Town area was again certified by the Planning Commission as a Redevelopment Area on January 8, 1963, being then included as a part of the Center City Redevelopment Area. (N.T. 464-65)

5. Among the data considered by the Planning Commission in making the 1963 certification of the Center City Redevelopment Area were the Summary Report on the Central Urban Renewal Area by the Planning Commission, February 1956 (R-40), the Summary Report on the Central Urban Renewal Area by the Redevelopment Authority, March 1956 (R-41), the Pilot Plan of the City Planning Commission, February 1957 (R-42), the Traffic Improvement Plan for the Central Business District by Wilbur Smith Associates, March 1957 (R-43), the Parking Study of the Central Business District by Wilbur Smith and Associates, September 1957 (R-44, R-44(a)), the Study on Commercial Land Use Distribution by Larry Smith and Associates, September 1957 (R-45), the Study on the Usefulness of the Philadelphia Industrial Plant by Arthur D. Little and Company, January 1960 (R-46, R-46(a)), and the Comprehensive Plan for Center City of the City Planning Commission, January 1963 (R-48). (N.T. 454-67).

6. The data available to the Planning Commission for the Center City Redevelopment Area certification was

supplemented by 1960 census material and field observation of every building in the area. (N.T. 466-67)

7. The 1963 Center City Redevelopment Area certification constituted a finding by the City Planning Commission that the Center City Area, including Franklin Town, contained unsafe, unsanitary, inadequate or overcrowded conditions of housing, inadequate planning of the area, lack of proper light, air and open space, faulty street or lot layout, defective design and arrangement of buildings and economically or socially undesirable land uses. (N.T. 468)

8. In February 1963, the City Planning Commission adopted the Center City Redevelopment Area Plan (R-50) and in December 1967 the Philadelphia City Planning Commission adopted a revised Center City Redevelopment Area Plan (R-51). (N.T. 471-73)

9. In 1963 the proposed redevelopment in the Franklin Town area was high density-industrial-multistory buildings for such trades as printing, manufacturing of clothing and small equipment. (N.T. 469-70). The 1967 Plan made no essential change in the 1963 Plan. (N.T. 473)

10. In July 1971, Metropolitan Engineers, Incorporated, prepared for the Planning Commission and the Redevelopment Authority a study of the conditions in an area encompassing Franklin Town and certain adjacent blocks not finally included in Franklin Town (R-52). (N.T. 473-74)

11. In July 1971, the Philadelphia City Planning Commission adopted amendments to the Center City Rede-

velopment Plan (R-53) which changed the proposed land use in Franklin Town from high density industrial to a mixture of residential and commercial. (N.T. 476)

12. In amending the Center City Redevelopment Plan, the Planning Commission confirmed its finding of blight made in 1952 and 1963. (N.T. 478). No changes took place in the area now designated as Franklin Town between 1963 and 1971 which could have constituted an elimination of the blight which had been certified as existing in 1963. (N.T. 737-38)

13. The block within Franklin Town bounded by 16th Street, Race Street, 17th Street and Vine Street, commonly called the South Block, contained a wide range of elements of blight in 1971. (R-52, N.T. 541-46).

14. In order to create a viable plan for Franklin Town it was necessary to include the South Block within the area to be redeveloped in order to link Franklin Town with Penn Center and Center City. (N.T. 84-86, 481-82)

15. The boundaries of the Franklin Town Project were modified in a number of respects to effect inclusion and exclusion from the project area as a result of consultation and mutual agreement between Franklin Town Corporation and the staff of the City Planning Commission, certain of said changes being initiated at the suggestion of the Planning Commission staff. (N.T. 479-81)

16. There is no evidence that any property was included for condemnation within the Franklin Town Project arbitrarily or capriciously or without the need of such property for the creation of a viable redevelopment project capable of removing the indicia of blight existing within the area.

17. The Franklin Town Redevelopment Project is devised to effect the redevelopment of Franklin Town without any federal subsidy, direct or indirect, and without any other public funds being used to subsidize the acquisition, or preparation of the redevelopment area. (N.T. 39-44)

18. Franklin Town, a joint venture, predecessor to Franklin Town Corporation, was selected as redeveloper by the Redevelopment Authority at its meeting of June 4, 1971. (R-55)

19. On September 3, 1971, after a public meeting, the Redevelopment Authority approved the Redevelopment Proposal for the Franklin Town area, reaffirmed the selection of Franklin Town joint venture as redeveloper, approved the financial ability of Franklin Town to acquire the area, approved the authorization of the Redevelopment Contract and authorized preparation of an ordinance to carry out the foregoing. (P-12)

20. On September 7, 1971, the Philadelphia City Planning Commission approved the Redevelopment Proposal for the Franklin Town Project and the Redevelopment Agreement, with modifications, and transmitted the same to City Council. (R-13, R-54, N.T. 94-95)

21. On December 8, 1971, the City Council of Philadelphia held a public hearing before the Rules Committee concerning the adoption of an ordinance approving a change in the Redevelopment Proposal for the Franklin Town area and the approval of the Redevelopment Agreement between the Redevelopment Authority and Franklin Town, a joint venture. (R-14, N.T. 98-99)

22. On December 30, 1971, the City Council of Philadelphia adopted Ordinance 2666, approving the Rede-

velopment Agreement and the modification to the Redevelopment Proposal, and on December 31, 1971, the Mayor approved this Ordinance. (N.T. 99-100)

23. On January 8, 1973, the Redevelopment Authority by formal resolution authorized and ratified the execution, acknowledgment and delivery of the Redevelopment Agreement between Franklin Town Corporation (successor to Franklin Town, a joint venture) and the Redevelopment Authority. (R-27, P-14)

24. On April 2, 1973, the Redevelopment Authority by formal resolution authorized the condemnation of the properties in Franklin Town which are the subject of these Preliminary Objections. (P-15)

25. On April 26, 1973, the Declaration of Taking and the Notice of Condemnation for the condemnation which is the subject of this action were filed in the Department of Records of the City of Philadelphia and the Office of the Prothonotary of the Court of Common Pleas of Philadelphia. (R-68, R-69, N.T. 780-83)

26. On April 26, 1973 the Redevelopment Authority filed its bond dated April 2, 1973 in an open amount to pay the damages arising under the Eminent Domain Code. (R-68)

27. The Redevelopment Authority has no funds available to meet its obligation under its bond except what it receives from or through Franklin Town Corporation. (N.T. 1265, 1307, 1530)

28. The Redevelopment Authority received from Franklin Town Corporation on December 15, 1972 its bond unconditionally obligating it to pay up to $20 million

for damages arising and payable under the Eminent Domain Code. (R-22, N.T. 122)

29. Franklin Town Corporation is a Pennsylvania corporation. Its shareholders are I-T-E Imperial Corporation, Smith Kline Corporation (formerly Smith Kline & French Laboratories), Philadelphia Electric Company, Butcher & Singer (formerly Butcher & Sherrerd) and Korman Corporation. (N.T. 115)

30. The Franklin Town bond is a general obligation of Franklin Town and is payable out of assets available to general creditors of the Corporation.

31. To secure its bond, Franklin Town Corporation caused to be delivered to the Authority an Assurance Letter from Girard Trust Bank dated December 15, 1972 (the "Girard Letter") (R-24) and a Second Mortgage on all of the property owned or thereafter to be acquired by Franklin Town in the Project Area. (R-23, N.T. 122, 326)

32. The Girard Letter irrevocably provided $12.1 million to be used solely to pay damages arising and payable under the Eminent Domain Code and is available to the Authority regardless of any action or default by Franklin Town.

33. The assembled value of the land included in Franklin Town has been appraised at $29 million and the maximum first mortgage debt is $17.1 million, leaving the Authority with an equity of $12 million under the Second Mortgage. (R-24, R-25, R-59)

34. The eminent domain damages involved in the April 26, 1973 condemnation were estimated by the Authority at $7,860,000 consisting of $5,880,000 for real es-

tate, $913,000 for machinery and equipment, $959,500 for relocation payments and $107,500 for relocation services. (R-65, R-65 (a), R-66)

35. Based on the highest appraisal received by the Redevelopment Authority for each individual property to be acquired as of the date of condemnation, the cost for the real property would be $6,030,000 (N.T. 1700-1) and the maximum estimated eminent domain damages were $8,010,000.

36. Section 8 of the proposed form of Redevelopment Contract submitted by the Redevelopment Authority to City Council and approved by Ordinance 2666 on December 30, 1971 provided that Franklin Town Corporation deliver a bond with corporate surety for the condemnation costs in an amount to be determined by the Authority as equal to 200% of acquisition costs and 100% of relocation costs. (R-27, P-18)

37. On August 23, 1972 the Redevelopment Authority approved a bond of $20 million from Franklin Town secured by the Girard Letter and the Second Mortgage. (P-13, R-59)

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## CONCLUSIONS OF LAW

1. The Redevelopment Authority had the power to condemn properties in the Franklin Town area on April 26, 1973 because at all pertinent times subsequent to January 16, 1952, when the area was certified as part of a redevelopment area, it was in fact blighted as defined by the Urban Redevelopment Law, 1945, May 24, P.L. 991, 35 P.S. 1701 et seq.

2. The Certification of the North Central Redevelopment Area by the Philadelphia City Planning Commission on January 16, 1952, was based on a record which fully supported a determination that the area was then blighted.

3. The Certification of the Center City Redevelopment Area by the Planning Commission on January 8, 1963 was based on a record which fully supported a determination that the area was then blighted.

4. The amendments to the Urban Renewal Plan for the Franklin Town portion of the Center City Redevelopment Area by the Planning Commission in July 1971 were based on a record which fully supported a determination that that portion of the area was then blighted.

5. The preliminary objectors have not proven that the Certification of the North Central Redevelopment Area as blighted was arbitrary or capricious.

6. The preliminary objectors have not proven that the Certification of the Center City Redevelopment Area as blighted was arbitrary or capricious.

7. The preliminary objectors have not proven that the confirmation by the Planning Commission through the 1971 amendment to the Center City Urban Renewal Plan that the Franklin Town portion of the Center City Redevelopment Area was blighted was arbitrary or capricious.

8. The present condemnation serves a public purpose of removing blight from the Franklin Town portion of the Center City Redevelopment Area.

9. The security obtained by the Redevelopment Authority, consisting of the $20 million bond of Franklin

Town, the Letter of Girard Trust Bank and the Second Mortgage is adequate and sufficient security as required under the Eminent Domain Code, Act of 1964, June 22, P.L. 84, 26 P.S. Sec. 1-403.

10. The action of the Redevelopment Authority in accepting Franklin Town's bond, the Girard Letter and the Second Mortgage was within its authority, does not violate the Eminent Domain Code, and was accepted by Redevelopment Authority as satisfactory compliance with the terms and conditions of the Redevelopment Agreement.

11. All of the procedures required by the Pennsylvania Urban Redevelopment Law in order to empower the Redevelopment Authority to condemn the properties subject to this litigation have been complied with.

12. The Redevelopment Authority has followed all of the procedures required by the Eminent Domain Code in carrying out the condemnation which is the subject of the litigation.

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ORDER

AND NOW, to wit, this 24th day of July, 1974, the several Preliminary Objections filed and not heretofore withdrawn are DISMISSED.

Takiff,
*J.*

## APPENDIX B
## (339 A. 2d 885)

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## IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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No. 1084 C.D. 1974

A Condemnation Proceeding In Rem by Redevelopment Authority of the City of Philadelphia for the Purpose of Redevelopment of Franklin Town Project Philadelphia, Including Certain Land, Improvements and Properties

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No. 249 C.D. 1974

Philip B. Basser et al.,
Appellants

Thomas Lazar,
Appellant

v.

Redevelopment Authority of the City of Philadelphia,
Appellee

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No. 250 C.D. 1974

Thomas Lazar,
Appellant

v.

Redevelopment Authority of the City of Philadelphia,
Appellee

No. 251 C.D. 1974

Thomas Lazar,

Appellant

v.

Redevelopment Authority of the City of Philadelphia,

Appellee

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No. 252 C.D. 1974

Philip Basser,

Appellant

v.

Redevelopment Authority of the City of Philadelphia,

Appellee

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Before:

Honorable James S. Bowman, President Judge

Honorable James C. Crumlish, Jr., Judge

Honorable Harry A. Kramer, Judge

Honorable Roy Wilkinson, Jr., Judge

Honorable Glenn E. Mencer, Judge

Honorable Theodore O. Rogers, Judge

Honorable Genevieve Blatt, Judge

Argued: March 4, 1975—Harrisburg.

## OPINION

Opinion by Judge Crumlish, Jr., filed: May 27, 1975:

Consolidated for disposition in the instant case are appeals by Thomas Lazar and Philip B. Basser (Appellants) from an order of the Court of Common Pleas of Philadelphia County dismissing preliminary objections to a declaration of taking filed by the Redevelopment Authority of the City of Philadelphia (Redevelopment Authority). We affirm that order.

On April 26, 1973, the Redevelopment Authority filed a declaration of taking of an area comprising approximately fifty acres within the City of Philadelphia bounded on the east by Sixteenth Street, on the west by 21st Street, on the south by Race Street and on the north by Spring Garden Street. Preliminary objections were filed by a number of property owners in the area. Settlements reduced the number to seven and they are before us in the action in its present posture. After weeks of extensive hearings, the Court of Common Pleas, in an exhaustive and ably articulated opinion by Judge Takiff, dismissed the preliminary objections.

The area involved in this taking is a combination of residential, industrial, institutional, light industry and commercial uses. Previously (January 1952), it had been certified as a Redevelopment Area by the City Planning Commission and had been recertified in 1967 when the comprehensive plan of the Planning Commission renewed its call for redevelopment of the area.

The results of the various studies were introduced into evidence which demonstrated that over the years the area had excessive land coverage by buildings, and that it lacked proper light, air and open space in addition to its having faulty street and lot layouts, traffic and circulation deficiencies, excessive dwelling density and miscellaneous environmental deficiencies. In each certification by the City Planning Commission and in the various summary reports compiled by the comprehensive planning division of the Planning Commission based on criteria of the Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, *as amended*, 35 P.S. §1701 et seq., the area was certified as "blighted". Appellants concede that the area is "blighted" for purposes of this appeal.

The area, publicly identified as "Franklin Town", was considered for development by a joint venture consisting of Philadelphia Electric Company, Smith Kline Corporation, ITE Imperial, The Korman Corporation and Butcher & Sherred, and was envisioned by them as a complete non-subsidized or non-assisted project, so that the total cost of the project would be borne by the Redeveloper alone, rather than a project which required public money subsidies. In 1969, following consultation with the Redevelopment Authority, the Planning Commission and the Mayor, the feasibility of the project as a non-assisted project was determined limiting public aid to the employment of the authority of Eminent Domain.

By Resolution No. 7522 of the Redevelopment Authority, Franklin Town (then a joint venture) was conditionally approved as redeveloper for the project and an assistance agreement was executed between the joint venture and the Redevelopment Authority on June 16, 1971,

whereby the Redevelopment Authority would render professional and technical service required for the preparation of a redevelopment proposal, preparation of ordinances, acquisition of properties, management of acquired properties and other services with all of the direct and indirect costs for the same to be paid by the Redeveloper. Following public meetings, the Redevelopment Authority, on September 3, 1971, by its formal Resolution No. 7635 reaffirmed its selection of Franklin Town as developer after considering the developers' financial ability to acquire the area. It approved the redevelopment proposal and authorized preparation of an ordinance to implement the execution of the project. The public hearings before the Council of the City of Philadelphia held on December 8, 1971, and deliberations thereon resulted in the passage of Council Bill No. 2666 which was approved on December 31, 1971, by the Mayor and authorization was then given to the Redevelopment Authority "to proceed with minor changes in substantial conformity with the said Redevelopment Proposal."[1] That ordinance further empowered the Redevelopment Authority to execute a redevelopment con-

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[1] Section 1 of Bill No. 2666 states in relevant part: "The Council of the City of Philadelphia hereby ordains: Section 1. The redevelopment proposal dated July, 1971, including the detailed redevelopment area plan, as superseded and amended, the maps, and all other documents, plans, and supporting data which form part of the proposal, submitted by the Redevelopment Authority for the Center City Redevelopment Area, Franklin Town Project, (hereinafter called 'Project'), having been duly reviewed and considered, is approved. *The Redevelopment Authority is authorized to take such action as may be necessary to carry it out. City Council authorizes the Redevelopment Authority to proceed with minor changes in substantial conformity with the said redevelop-*

tract with the joint venturers who were later to organize as a corporation, Franklin Town, and "to take such action in substantial conformity to the redevelopment contract as may be necessary to carry it out."[2]

On December 15, 1972, a redevelopment contract was executed between Franklin Town Corporation and the Redevelopment Authority providing for acquisitions of approximately 10 acres of property by the Authority and to stage transfers thereof to Franklin Town Corporation within 84 months.

The preliminary objections filed and dismissed below consisted of the following:

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*ment proposal as long as said minor changes are in conformity with the current area redevelopment plan for the Project.* The Project is bounded as follows: . . . ." (Emphasis added.)

[2] Section 5 of Bill No. 2666 states: "Section 5. The Redevelopment Authority is authorized to execute the hereby approved redevelopment contract with Franklin Town, a joint venture, to be reorganized as a corporation, (hereinafter called 'Redeveloper'). *The Redevelopment Authority and the Redeveloper are authorized to take such action in substantial conformity to the redevelopment contract as may be necessary to carry it out.* Council finds and determines with respect to relocation in particular, that the hereby approved redevelopment contract provides, and the Redeveloper agrees, that the Franklin Town Relocation Standards and Guarantees contained in the said redevelopment contract include, but are not limited to, the standards and philosophy of the Federal Uniform Relocation Act of 1971, or as the Act may hereafter be amended. Council further finds and determines that the hereby approved redevelopment contract provides that the Redeveloper will exceed the said federal relocation standards as they may be administratively interpreted in specific instances provided for in the documentation contained in the said redevelopment contract." (Emphasis added.)

(1) It was advanced that no blight existed.

(2) The Redevelopment Authority acted in an arbitrary and capricious manner.

(3) The taking was discriminatory and for a private purpose.

(4) Improper bond was posted.

As previously noted, Appellants now concede the blight issue but argue the lower court's error as to the outstanding three questions. We can find no such error.

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## ARBITRARY AND CAPRICIOUS CONDUCT

Appellants argue that the mandate of Schwartz v. Urban Redevelopment Authority, 411 Pa. 530, 192 A. 2d 371 (1963) and City of Philadelphia v. Southeastern Pennsylvania Transportation Authority, 1 Pa. Commonwealth Ct. 101, 271 A. 2d 504 (1971) has been ignored. Those cases said, "[t]he authority is a public body exercising public powers of the Commonwealth as an agency thereof . . . as a public body it stands in a fiduciary relationship to the public and the taxpayers, and its conduct must always be guided by the rule of good faith, fidelity and integrity." City of Philadelphia v. Southeastern Pennsylvania Transportation Authority, supra, 1 Pa. Commonwealth Ct. at 110, 271 A. 2d at 508.

The first of Appellants' contention is that the Redevelopment Authority acted in bad faith by executing an assistance agreement with Franklin Town. We find this without merit. This and other redevelopment authorities have used similar agreements and nowhere in law can we

find the suggestion of impropriety in its use. Second, Appellant contends that the exclusion of the Lit Brothers warehouse was in some way discriminatory. Section 1702.(c.1) of the Urban Redevelopment Law, 35 P.S. §1702.(c.1), in announcing the declaration of policy of the Act, provides for either total acquisition, clearance and disposition of blighted areas *or* acquisition, clearance and disposition of a portion thereof to eliminate the blight.[3] Operating within such a mandate, the Redevelopment Authority could well have chosen to allow one or more warehouses or other properties to remain in the area notwithstanding Appellants' decisional disagreement. The Authorit's conduct was neither capricious nor arbitrary.

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## TAKING FOR PRIVATE PURPOSE

It is hornbook in Pennsylvania law that an authority may not condemn lands for private purposes. Kramer Ap-

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[3] Section 1702.(c. 1) states:

"It is hereby determined and declared as a matter of legislative finding,—

. . .

"(c. 1) That certain blighted areas, or portions thereof, may require total acquisition, clearance and disposition, subject to continuing controls as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation or conservation, and that other blighted areas, or portion thereof, through the means provided in this act, may be susceptible to rehabilitation or conservation or a combination of clearance and disposition and rehabilitation or conservation in such manner that the conditions and evils hereinbefore enumerated may be eliminated or remedied."

peal, 438 Pa. 498, 266 A. 2d 96 (1970); Price v. Philadelphia Parking Authority, 422 Pa. 317, 221 A. 2d 138 (1966); Belovsky v. Redevelopment Authority of Philadelphia, 357 Pa. 329, 54 A. 2d 277 (1954); Golden Dawn Shops, Inc. v. Philadelphia Redevelopment Authority, 3 Pa. Commonwealth Ct. 314, 282 A. 2d 395 (1971).

In Golden Dawn, supra, we held that a preliminary objection raises an issue of fact from the determination of which a legal conclusion as to the Authority's power to purchase follows. In that case no evidentiary hearing as to purpose was held, and so a remand for an evidentiary hearing was necessary. In the case before us, Judge Takiff presided over exhaustive hearings and purpose of the taking was one of the prime issues. We now have before us a complete record. See Faranda Appeal, 420 Pa. 295, 216 A. 2d 769 (1966).

Appellants contend, however, that the lower court's conclusion of law number 8 on the purpose of the taking is an inaccurate statement and conclusion of the law. That conclusion states:

> "*The present condemnation serves a public purpose of removing blight* from the Franklin Town portion of the Center City Redevelopment Area." (Emphasis added.)

Citing Golden Dawn, supra, Appellants argue that if the area is certified as blighted, the consequential taking is *not*, of necessity, for a public purpose. Appellee counters by asserting that Belovsky v. Redevelopment Authority of Philadelphia, supra, is controlling on this issue, and neither Price v. Philadelphia Parking Authority, supra, nor Golden Dawn, supra, cited by Appellants, have changed the law of

taking for a public purpose. We must agree with Appellee, and also reject Appellants' argument that although the individual actions taken to secure condemnation rights, proper zoning, etc. were not illegal and for a private purpose, the entirety of the plan when viewed in perspective shows taking for a private purpose.

Justice Stern, speaking for the Court in Belovsky, supra, after comparing the purposes of the Housing Authorities Law and the Urban Redevelopment Law, wrote:

> "In the case of the Urban Redevelopment Law, therefore, the justification of the grant of the power of eminent domain is even clearer than in the case of the Housing Authorities Law, *there being in the present act [the Urban Redevelopment Law] only the one major purpose of the elimination and rehabilitation of the blighted sections of our municipalities, and that purpose certainly falls within any conception of 'public use'* for nothing can be more beneficial to the community as a whole than the clearance and reconstruction of those sub-standard areas which are characterized by the evils described in the Urban Redevelopment Law.
>
> . . .
>
> Nothing, of course, is better settled than that property cannot be taken by government without the owner's consent for the mere purpose of devoting it to the private use of another, even though there be involved in the transaction an incidental benefit to the public. *But plaintiff misconceives the nature and extent of the public purpose which is the object of this legislation. That purpose, as before pointed out, is*

*not one requiring a continuing ownership of the property as it is in the case of the Housing Authorities Law in order to carry out the full purpose of that act, but is directed solely to the clearance, reconstruction and rehabilitation of the blighted area, and after that is accomplished the public purpose is completely realized.* When, therefore, the need for public ownership has terminated, it is proper that the land be retransferred to private ownership, subject only to such restrictions and controls as are necessary to effectuate the purposes of the act. It is not the object of the statute to transfer property from one individual to another; such transfers, so far as they may actually occur, are purely incidental to the accomplishment of the real or fundamental purpose.

. . .

Indeed, so far from it being legally objectionable that property acquired by eminent domain be resold or retransferred to private individuals after the purpose of the taking is accomplished, the law actually requires that property be taken by eminent domain only to the extent reasonably required for the purpose for which the power is exercised (Bachner v. Pittsburgh, 339 Pa. 535, 539, 15 A. 2d 363, 365) and upon cessation of the public use the public ownership is properly discontinued. *Nor does the taking lose its public character merely because there may exist in the operation some feature of private gain, for if the public good is enhanced it is immaterial that a private interest also may be benefited.*"

Belovsky v. Redevelopment Authority of Philadelphia, supra, 357 Pa. at 338-41, 54 A. 2d at 282-83 (emphasis added.)

Appellees, having conceded for purposes of this appeal, that the area in question has properly been certified as blighted, cannot prevail in their argument, for as Justice Stern held, "there [is] in the present act [Urban Redevelopment Law] only the one major purpose of elimination and rehabilitation of blighted sections of our communities, and that purpose certainly falls within any conception of 'public use'." The short of this is that Belovsky, supra, is dispositive and incidental private gain does not vitiate the public character of the taking of blighted areas.

---

## ORDINANCE DIRECTIVE OF CORPORATE SURETY

We come now to the final issue to be determined. Appellants urge us to find that the taking is illegal because the Redevelopment Authority failed to comply with the City ordinance requiring *corporate surety* in double the amount of the estimated acquisition costs. Appellees retort by arguing that the surety is not objectionable since it is in *substantial conformity to the contract* as specifically provided for by Council Bill No. 2066. We now refer to the relevant statutory and contract provisions dealing with surety. The Assistance Agreement between Franklin Town and the Redevelopment Authority containing cost, bond and damage provisions states:

> "b. *Direct Costs*
>
> "Payment for all direct costs shall be made to the Authority by the Redeveloper upon receipt from the Authority of a requisition for actual costs incurred by the Authority.

"Prior to execution of the Redevelopment Contract for the project, the Redeveloper agrees to furnish the Authority with a letter from an insurance company or bank acceptable to the Authority, verifying that the Redeveloper has *a letter of credit or other acceptable form, in an amount agreed upon by the Redeveloper and the Authority as sufficient to cover all elements of damage in the Pennsylvania Eminent Domain Code to be incurred by the Authority in the execution of this project*, and the insurance company or bank will, upon request, pay to the Redeveloper for transmittal to the Authority the funds requisitioned by the Authority from time to time for payment of costs incurred hereunder." (Emphasis added.)

"6. *Condemnation Bond*

"To secure the obligation of the Redeveloper to pay costs incurred under this Agreement pursuant to the Pennsylvania Eminent Domain Code, the Redeveloper agrees to deposit with the Authority, prior to the Authority's execution of the Redevelopment Contract, a bond or bonds with *corporate surety*, in form reasonably satisfactory to the Authority, suitable for filing with the Court with a Declaration of Taking in an amount agreed upon by the Redeveloper and the Authority. The amount of the bond to be sufficient to cover and based upon the following elements of damage in the Pennsylvania Eminent Domain Code: *twice the estimated acquisition costs of property to be acquired by the Authority* including the estimated amount of machinery and equipment damages for such properties, plus the total estimated costs for commer-

cial and residential relocation payments and damages for loss of patronage." (Emphasis added.)

The Eminent Domain Code, Act of June 22, 1964, Special Sess., P.L. 84, *as amended*, 26 P.S. §1-403 provides:

> "(a) Bond. Except as hereinafter provided, every condemnor shall give security to effect the condemnation by filing with the declaration of taking its bond, without surety, to the Commonwealth of Pennsylvania for the use of the owner or owners of the property interests condemned, the condition of which shall be that the condemnor shall pay such damages as shall be determined by law."

Section 1-403 is explained in the 1964 Comment by the Joint State Government Commission as follows:

> "This subsection changes existing law. Generally, under existing law when a condemnor is required to give security, the condemnor must tender a bond to the owner and if the bond is not accepted by the owner, the condemnor must file it in court and have it approved. See, e.g., The First Class Township Code, 1931 June 24, P.L. 1206, Art. XIX, §1903, as reenacted and amended (53 P.S. §56903) and as to corporations, the Act of 1874, April 29, P.L. 73, §41, as amended (15 P.S. §482). It is intended by this subsection to eliminate the necessity of tendering a bond to the condemnee and obtaining court approval thereof; the condemnor merely files an open end bond with the declaration of taking. If the condemnee desires to challenge the bond, he may file preliminary objections thereto after being served with notice. See

Sections 405 and 406. It is intended by this subsection that the bond filed shall be an open end bond."

A careful review of the material statutory and contractual provisions makes it abundantly clear that although the contractual corporate surety provision, calls for surety to be twice the estimated acquisition cost of property to be acquired, it is not specifically required by the Eminent Domain Code. Albeit comporting to the open end provision, the condemnor and the redeveloper have elected to agree to such an arrangement. The natural question which must follow is what of the rights of the sundry condemnees? Do not they have some right to challenge the sufficiency of the security arrangement between the condemnor and the redeveloper so that they may be assured that there are sufficient funds to satisfy condemnation damages? Of course they do. Section 406 (a) and (c) of the Eminent Domain Code, 26 P.S. §§1-406 (a) and (c) provide the method by which the condemnee, by preliminary objection, may challenge the sufficiency of the bond. That procedure was followed in the present case.

At this point, it might be well to point out that the Assistance Agreement between Franklin Town and the Redevelopment Authority contained an apparent redundancy when it provided for security to cover all elements of damage payable under the Eminent Domain Code, first in the form of a letter of credit from a bank or insurance company, and then second, in the form of a bond with corporate surety in a form reasonably satisfactory to the Authority. In the final agreement of December 15, 1972, between Franklin Town and the Redevelopment Authority, only that provision dealing with corporate surety was included. It was this final contract which was submitted to, and ap-

proved by City Council wherein all parties were authorized to proceed in *substantial conformity to the Redevelopment contract as may be necessary to carry it out.*

And now, we reach the determinative issue of sufficiency of the security. The actual security for damages incurred by reason of condemnation given by Franklin Town to the Authority is as follows: (1) Franklin Town Corporation's unconditional bond in the amount of $20,000,000; (2) a second mortgage on all presently owned and after acquired property of the Franklin Town Corporation; (3) a letter of commitment from Girard Bank. We must decide whether this security, which admittedly is not corporate surety as was literally written by contract and ordinance, is a legally satisfactory substitute for corporate surety in light of the meaning of the substantial conformity provision of the Council ordinance and the purpose underlying the contractual provision of corporate surety to provide a sufficient fund for condemnation damages, we hold that the substituted security is valid.

Judge Takiff below accurately observed that the objection of condemnees pursuant to Sections 406(a) and (c) must, of necessity, go to *sufficiency* and not to *form.*[4] The incisive inquiry must, therefore, go to an examination of the security posted to determine whether it will be suf-

---

[4] Specifically, Section 406(a)(2), 26 P.S. §1-406(a)(2) states:

"(a) Within thirty days after being served with notice of condemnation, the condemnee may file preliminary objections to the declaration of taking . . . . Preliminary objections shall be limited to and shall be the exclusive method of challenging . . . .

(a) the *sufficiency* of the security; . . . ." (Emphasis added.)

ficient to meet condemnation damages, and not to determine whether the form of that security is in substantial conformity to the contractual corporate surety provision.

The unconditional bond posted by Franklin Town was in the amount of $20,000,000.00. In non-assisted redevelopment programs, the Redevelopment Authority requires that the bond be twice the appraised value of the real estate, machinery and equipment, and 100% of relocation costs and loss of patronage damages. For the present project the formula amounts to $18,000,000.00. The posting of a $20,000,000.00 unconditional bond doubtless is sufficient.

In addition, Girard Bank's letter of commitment for the sum of $12,100,000.00 to cover all damages arising under the Eminent Domain Code, must be classed as sufficient as practicality dictates that such a letter is highly liquid and provides easy access to the funds committed by the letter. Franklin Town has agreed with Girard Bank that these funds are to be used solely for acquisition and relocation costs and that all withdrawals from this fund will be subject to the Redevelopment Authority's prior approval. Girard Bank has been given a first mortgage on all property owned or hereinafter acquired by Franklin Town as the quid pro quo. Under these circumstances, we find no insufficiency in this fund.

And finally, the Authority has received a second mortgage on all property now owned or after acquired by Franklin Town. The total assembled value of all the mortgaged property was $29,000,000.00 with $17,000,000.00 of that sum allocable to Girard Bank's first mortgage leaving the difference of approximately $12,000,000.00 as the value of

the second mortgage. Admittedly, this fund is not as liquid or readily accessible as are the bond and letter of commitment funds, but we are satisfied that there exists enough security in the fund to make it sufficient for the purposes of preliminary objections.

Having concluded that the security is sufficient and having found that available funds are more than adequate to discharge the primary obligation to the condemnees under the Eminent Domain Code, we must dismiss Appellants' argument as to the quality and extent of the security.

In light of the foregoing, we affirm the order of the court below which dismissed the preliminary objections.

James C. Crumlish, Jr.,
*Judge*

## APPENDIX C

---

SUPREME COURT OF PENNSYLVANIA
Eastern District

---

Philadelphia, 19107
July 29, 1975

David Freeman, Esq.,
Suite 1222
1315 Walnut Street Building
Phila., Pa. 19107

In re: A Condemnation Proceeding in Rem by Redevelopment Authority of the City of Philadelphia for the Purpose of Redevelopment of Franklin Town Project Philadelphia, including certain land, improvements, and properties. Philip B. Basser et al. v. Redevelopment Authority of the City of Philadelphia

Petition of: Philip B. Basser et al. No. 1984 Allocatur Docket

Dear Mr. Freeman:

Please be advised that the Court has entered the following Order on both the Petition for Allowance of Appeal from Judgment of the Commonwealth Court, and the Petition for Stay of Proceedings:

"July 25, 1975

Petition Denied

Per Curiam."

Very truly yours,
Sally Mrvos
*Prothonotary*

SMM:mb
CC: William T. Steerman, Esq.

75-587

IN THE

# SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

October Term, 1975

FILED
NOV 7 1975
MICHAEL RODAK, JR., CLERK

No. 587

IN RE: A CONDEMNATION PROCEEDING IN REM BY REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA FOR THE PURPOSE OF REDEVELOPMENT OF FRANKLIN TOWN PROJECT PHILADELPHIA, INCLUDING CERTAIN LAND IMPROVEMENTS AND PROPERTIES

PHILIP B. BASSER ADVERTISING, INC., PHILIP B. BASSER, GERTRUDE GRENNETTE, THOMAS A. LAZAR, GENEVIEVE LAZAR, ARMONDO DE FRANCESO, JOSEPH SORGER, WILLIAM SATIS, BESSIE SATIS, HARRY WEXLAR, ARISTIDAS G. PAPPAS AND BARBARA PAPPAS,

*Petitioners*

*v.*

REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA,

*Respondent*

# BRIEF FOR RESPONDENT IN OPPOSITION

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

WILLIAM T. STEERMAN
*Attorney for Respondent*

*Of Counsel:*
FREDERIC L. BALLARD
MICHAEL CHURCHILL
PETER A. GALANTE

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Philadelphia, Pa. 19102

THE LEGAL INTELLIGENCER, 301 NORTH JUNIPER STREET, PHILA., PA. 19107 (215) 561-4858

## COUNTER-STATEMENT OF THE ISSUE PRESENTED

Where, in an admittedly "blighted", certified redevelopment area, the Authority-Condemnor selects as developer a qualified private corporation which will use in the development no public funds and where, in the betterment of the public good and welfare, there may be some private pecuniary gain, does such taking by the Authority violate the Fifth and Fourteenth Amendments of the United States Constitution.

## COUNTER-STATEMENT OF THE CASE

Petitioners' properties were condemned by the Redevelopment Authority of the City of Philadelphia (herein "Authority") for an urban development project known as the Franklin Town Project. Petitioners readily admit that the area was blighted and that the project will remove the blight. They, nevertheless, petition this Court to strike down the condemnation on the grounds that it violates the Fifth and Fourteenth Amendments of the Constitution of the United States in that the taking was "essentially for a private purpose". Petitioners' sole reason for urging this conclusion upon the Court is that the redevelopment project was conceived and is being carried out by a group consisting primarily of private landowners in the affected area.

The facts relevant to petitioners' contention are as follows:

In 1945, Pennsylvania, following a course that has become virtually universal among the states, enacted an Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, 35 P.S. §1701 et seq. In so doing the Pennsylvania Legislature declared it to be the policy of the Commonwealth to promote the health, safety and welfare of the inhabitants by creating redevelopment authorities for the purpose of eliminating blighted areas. (Section 2; 35 P.S. §1702). The law provides that: The Authority shall prepare a redevelopment proposal for any area certified by the Planning Commission to be a redevelopment area (i.e., an area that is blighted so as to require development); that the proposal shall be approved by the Planning Commission and by the governing body (in this case City Council) after public hearing; and that the governing body shall also approve the form of the proposed redevelopment contract with the redeveloper selected by the Authority (Section 10; 35 P.S. §1710). The law also requires certain terms and conditions to be contained in the redevelopment

contract in order to safeguard the public interest in the project (Section 11; 35 P.S. §1711), and authorizes the Authority to acquire land by purchase or eminent domain for the public purposes set forth therein (Section 9; 35 P.S. §1709) and to convey the same to the redeveloper by deed or lease, subject to the safeguards mentioned above (Section 11; 35 P.S. §1711).

In the case of the Franklin Town Project, the law was followed to the letter. The area had been certified by the Planning Commission in 1952, was recertified several times thereafter, and was included as a redevelopment area in the comprehensive plan of the City issued in 1967. The Franklin Town redevelopment proposal was announced in June of 1971. During the following six months, it received the necessary approvals of the Planning Commission and the Authority and the enabling ordinance was enacted by City Council after the prescribed public hearings at which, incidentally, several of the petitioners appeared and made their objections known. The ordinance as signed by the Mayor on December 31, 1971, reflected some of the views expressed at the public hearings and amended the proposed redevelopment contract in several respects.

A year later, in December, 1972, the redevelopment contract was signed, and thereafter, in April, 1973, the Authority authorized the use of eminent domain to acquire properties in the project area that could not be acquired by negotiation. Petitioners, together with certain other landowners, promptly filed objections to the taking in accordance with the Pennsylvania Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. §1-406, et seq., citing among other reasons their contention that the taking was essentially for a private purpose.

The trial court (Court of Common Pleas of Philadelphia County) after extensive hearings, dismissed the objections. Its opinion appears as Appendix A to the petition. The Court carefully considered the facts relied on by the petitioners: to wit that the project was conceived by a

group of private interests; that nearly all participants owned land in the project area; that the participants consulted the Mayor, the Authority, the Planning Commission and others about the feasibility of the Project and that the participants purchased additional properties in the area in contemplation of the Project. The Court also considered the terms of the so-called assistance contract between the redeveloper and the Authority; the inclusion of the South Block in the Project area, and the exclusion of the City Stores (Lits) warehouse. It found nothing improper in any of this and concluded that all procedures required by the Urban Redevelopment Law and the Eminent Domain Code had been complied with and that the condemnation served a public purpose.

In support of its decision the trial court cited a series of decisions of the Pennsylvania Supreme Court upholding the Redevelopment Law, including *Simco Stores v. Redevelopment Authority*, 455 Pa. 438, 317 A.2d 610 (1974) in which one of the developers was the owner of land in the redevelopment area, and the leading case of *Belovsky v. Redevelopment Authority of Philadelphia*, 357 Pa. 329, 54 A.2d 277 (1947), in which it was said:

> "Nor does the taking lose its public character merely because there may exist in the operation some feature of private gain, for if the public good is enhanced it is immaterial that a private interest also may benefit." (357 Pa. at 341, 54 A.2d at 283).

The trial court's decision was appealed to the Commonwealth Court of Pennsylvania which affirmed (Appendix B).

Finally, the objectors petitioned the Pennsylvania Supreme Court for the allowance of a further appeal. That petition was denied.

## REASONS FOR DENYING THE WRIT

There is nothing unusual or novel about this case. The Pennsylvania Urban Redevelopment Law closely resembles the statutes of other states, as well as the statute in effect in the District of Columbia which was upheld by this Court in *Berman v. Parker*, 348 U.S. 26 (1954). The existence of blight (the essential foundation for the use of eminent domain) was certified and recertified by city agencies on the basis of detailed studies over a period of 20 years. A special study showed that elements of blight persisted as of the date the project was approved, and the history of the area was one of steady deterioration with no hope of spontaneous renewal.

The petitioners' complaint is also typical. Since the statutory scheme calls for the Authority to condemn the blighted area, if necessary, and then turn to a private contractor for redevelopment, the time-honored objection of the condemnee is that his property is being taken for a private purpose. And the time-honored response of the courts is to point out that the essential public purpose is to assemble, clear, reconstruct and rehabilitate the blighted area, and that this public purpose is not vitiated by the incidental use of a private redeveloper. As stated by this Court in *Berman*:

> "Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. See *Luxton v. North River Bridge Co., supra;* cf. *Highland v. Russell Car Co.*, 279 U.S. 253. The public end may be as well or better served through

an agency of private enterprise than through a department of government-or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects. What we have said also disposes of any contention concerning the fact that certain property owners in the area may be permitted to repurchase their properties for redevelopment in harmony with the over-all plan. That, too, is a legitimate means which Congress and its agencies may adopt, if they choose." 348 U.S. at 33.

The Pennsylvania cases state that a taking of private property is not constitutional unless for a public purpose, and the Pennsylvania courts have always reviewed any taking to determine whether a project is rationally related to the public purpose of removing blight and sound reconstruction. The court decisions typically present this issue as whether the action of the Authority was arbitrary, capricious or in bad faith. *Price v. Philadelphia Parking Authority*, 422 Pa. 317, 221 A.2d 138 (1966); *Belovsky v. Redevelopment Authority of Philadelphia, supra; Dornan v. Philadelphia Housing Authority*, 331 Pa. 209, 200 A.834 (1938).

The participation of the private redevelopers in this project was open and above board. They consulted the proper authorities; they obtained the required approvals after numerous community meetings and public hearings. The terms of their proposed redevelopment contract were a matter of public knowledge for six months before City Council approved them, and a year of trial court proceedings and over 2000 pages of testimony lead inexorably to the conclusion that the demands of due process had been fulfilled.

Notwithstanding the voluminous record, the petitioners assert that the "primary purpose" of the condemnation was private gain and therefore violative of the Fifth and Fourteenth Amendments. That amounts to an asser-

tion that the entire redevelopment procedure was tainted, that the Authority, the Planning Commission, City Council and the Mayor were in some way aiders and abettors and in a vast conspiracy, and that a total of 15 judges failed to discern it. The trial court found that there was not a scintilla of evidence to sustain petitioners' contentions, and in the absence of any new evidence, such assertions should not be entertained by this Court. Petitioners do not point to a single fact remotely suggesting that the public will not reap the benefits from this project which the Urban Redevelopment Law is designed to promote.

Mr. Justice Douglas speaking for the Court in *Berman, supra.*, at 33, stated:

> "In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. *It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capitol should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.*" (Emphasis added)

The Philadelphia City Council, Mayor and Redevelopment Authority have made the legislative judgment that the public purpose of removing blight from the Franklin Town Urban Renewal Area should be realized through the vehicle of a private redeveloper. The Pennsylvania courts held that this determination did not violate the Constitution. The law applied by the Pennsylvania courts in this case was consistent with the decisions of this Court.

WHEREFORE, Respondent prays that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

William T. Steerman

WILLIAM T. STEERMAN
*Attorney for Respondent*

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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

# In the Supreme Court of the United States

October Term, 1975
No. 587

IN RE: A CONDEMNATION PROCEEDING IN REM BY REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA FOR THE PURPOSE OF REDEVELOPMENT OF FRANKLIN TOWN PROJECT PHILADELPHIA, INCLUDING CERTAIN LAND, IMPROVEMENTS, AND PROPERTIES

PHILIP B. BASSER ADVERTISING, INC., PHILIP B. BASSER, GERTRUDE GRENNETTE, THOMAS A. LAZAR, GENEVEVE LAZAR, ARMONDO DE FRANCESCO, JOSEPH SORGER, WILLIAM SATIS, BESSIE SATIS, HARRY WEXLAR, ARISTIDAS G. PAPPAS AND BARBARA PAPPAS,

*Petitioners*

vs.

REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA

## PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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## PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

---

The question posed by petitioners for decision by this Court, stated generally, is whether a certification of blight is sufficient to deter a Court from determining whether a taking was, nevertheless, essentially for a private purpose.

Redevelopment authorities and municipal legislative bodies may be maneuvered by enterprising businessmen to deprive citizens of their property for the paramount purpose of private gain by means of a taking ostensibly for the public welfare. In this case, it was accomplished by attaching an entire valuable city block (an "oasis" according to the trial judge) to the dilapidated property already owned by the proponents of the scheme, on the plea that this block (close to the center of activity in the city and which in time would make it on its own) was supposedly necessary to make the project "viable", that is, permit the proponents to use their own property to the best advantage. It was a bold act of piracy cloaked by Orwellian semantics in sententious sanctimony. The shoddy business of approaching the authorities in secret, obtaining their tacit approval and then buying up property on the sly, is treated in respondent's brief as if it were an open and above-board transaction.

Respondent's brief does not assert that the question posed should not be answered, or that it is not of sufficient importance for this Court. Nor does respondent specifically assert that the State Courts have answered the question. Instead, in a brilliant display of nebulous advocacy,

in a tactic of confession and avoidance, *it infers* an answer was made and then goes on to say "the trial Court found there was not a scintilla of evidence to sustain petitioners' contentions". *This statement is not found anywhere in the opinion of trial Court.*[1] Nor did any court examine the evidence to determine the essential purpose of the taking; holding merely that elimination of blight is a public purpose.

Respondent cites *Berman vs. Parker,* 348 U.S. 26, 75 S. Ct. 98, as authority in this matter. That case deals only with (a) the constitutionality of redevelopment legislation, (b) the propriety of hiring private redevelopers, (c) the criteria of blight (the drawing of area lines and whether every property taken must be blighted).

It *does not* concern itself with the issue here, viz., whether or not a taking may be for the paramount purpose of private profit, although the area is blighted. Excerpts are quoted out of context, in an apparent attempt (again not specifically stated) to assert that a Court cannot go beyond the determination of the authority to take a blighted area.

That this was not the intent of the Court in that case is indicated by its express approval of the case of *U.S. ex rel. T.V.A. vs. Welch,* 327 U.S. 546, 552, 66 S. Ct. 715-718, 90 L. Ed. 843, in its citation of the quote from *City of Cincinnati vs. Vester,* 281 U.S. 439-446, 50 S. Ct. 360-362, 74 L. Ed. 950, as follows:

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[1] The statement of the trial Court (Appendix A, page 38) was: "There is not a scintilla of evidence to support the allegation that the Redevelopment Authority has been subverted, 'taken over' and/or dominated by the private redeveloper".

This allegation was abandoned and not pressed on appeal.

> "It is well established that, in considering the application of the Fourteenth Amendment to cases of expropriation of private property, the question of what is a public use is a judicial one."

The use by respondent of the broad language in *Berman* points up additional reason for this Court to grant the petition. The Court should ensure that the opinion in *Berman* not be misused as a shield for the debasement of redevelopment procedures. It is necessary that the redevelopment system be protected from exploitation by profit seekers in order to prevent the collapse of this very significant social legislation in a sea of cynicism and corruption.

Respondent argues that 15 judges failed to discern a conspiracy. The argument of this petition is not that the State Courts failed to discern a conspiracy, but that they applied a rule of law which abrogates the necessity for a determination of purpose where blight is present.

Finally respondent, in tones of mock horror and round-eyed astonishment argues the impossibility of the involvement of city authorities in conspiracies.

Petitioners have not asserted on appeal that there were criminal conspiracies, or any other types of conspiracy in the pejorative sense. Nor is such a challenge necessary for their case. The paramount purpose of the taking as one for private gain, is established by the testimony of the Franklintown officers, presented by the authority. This is in violation of the due process clause of the 14th Amendment and petitioners should have relief.

Respectfully submitted,

DAVID FREEMAN,

*Attorney for Petitioners.*